RECORD, CASE No. 13,947.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 300.

WILLIAM BELDEN, PLAINTIFF IN ERROR,

vs.

EMORY A. CHASE AND WILLIAM J. HUGHES, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF WILLIAM DONAHUE, DECEASED.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 16, 1893.

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a N. Y. Court of Appeals.

EMORY A. CHASE and WILLIAM J. HUGHES, Executors of William Donahue, Deceased, Plaintiffs and Respondents,
against
WILLIAM BELDEN, Defendant and Appellant.

Case on appeal.

Hallock, Jennings & Chase, plaintiffs' and respondents' attorneys, Catskill, N. Y.; Wheeler, Cortis & Godkin, defendant's and appellant's attorneys, 45 William St., N. Y. city.

b Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 26th day of November, in the year of our Lord one thousand eight hundred and eighty-nine, before the judges of said court.

Witness the Hon. William C. Ruger, chief judge, presiding.
GORHAM PARKS, *Clerk.*

Remittitur, November 26th, 1889.

c EMORY A. CHASE & ANO., as Ex'rs, &c., of William Donahue, Deceased, Respondents,
ag'st
WILLIAM BELDEN, Appellant.

Be it remembered that on the twelfth day of October, in the year of our Lord one thousand eight hundred and eighty-eight, William Belden, the appellant in this action, came here into the court of appeals, by Wheeler, Cortis & Godkin, his attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court of the State of New York, and William A. Chase & another, as ex'rs, &c., of William Donahue, dec'd, the respondents in said action, afterwards appeared in said court of appeals, by Hallock, Jennings & Chase, their attorneys.

d Which said notice of appeal and the return thereto filed as aforesaid are hereunto annexed.

Whereupon the said court of appeals having heard this cause argued by Mr. Everett P. Wheeler, of counsel for the appellant, and by Mr. Peter Cantine, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed; and it was further ordered and adjudged that the respondents recover against the appellant costs of appeal to this court; and it was also

further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

e Therefore it is considered that the said judgment be in all things affirmed with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into the supreme court of the State of New York before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *Nov.* 26, 1889.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[Seal State of New York Court of Appeals.]

GORHAM PARKS, *Clerk.*

1 Supreme Court, County of Ulster.

EMORY A. CHASE and WILLIAM J. HUGHES, as Executors of the Last Will and Testament of William Donahue, Deceased,
against
WILLIAM BELDEN.

Please take notice that the defendant above named hereby appeals to the general term of this court from the judgment entered in this action in the office of the clerk of the county of Ulster on the 20th day of June, 1887, in favor of the plaintiffs and against the defendants for the sum of $27,668.26, and from the whole and every part of said judgment, and also from the order made and entered in this action in the office of the clerk of said court on the 17th day of June, 1887, denying the motion of the plaintiff for a new trial upon the minutes of the judge presiding, and from the whole and every part of said order.

Dated New York, July 13, 1887.

Yours, &c., MARSH, WILSON & WALLIS,
Attorneys for Defendant and Appellant.

To Messrs. Hallock, Jennings & Chase, attorneys for plaintiffs; the clerk of the county of Ulster.

2 N. Y. Supreme Court.

EMORY A. CHASE and WILLIAM J. HUGHES, Executors of William Donohue, Deceased, Plaintiffs and Respondents,
against
WILLIAM BELDEN, Defendant and Appellant.

Statement of Case.

Action to recover $35,600 damages for collision. Action was commenced by service of summons and verified complaint January 27th, 1883. The answer was served March 26, 1883. William Donohue, the original plaintiff, having died, the suit was continued in the name of the above plaintiffs, as his executors, by order made on the 20th day of March, 1883, before the answer was served. The petition, order, and proceedings continuing, the action- are omitted from the case by consent. The trial was changed from Greene to Ulster county on January 5, 1884. No other change of parties has taken place during the action and the names of the original parties are as above stated. The issues came on to be tried before Mr. Justice Edwards and a jury June 13th, 1887. The verdict was for the plaintiff in the sum of $25,910, whereon judgment was entered June 20th, 1887. A motion upon the minutes for a new trial was made and denied, and from the order thereon, as well as from said judgment, defendant appealed to the general term of this court. The pleadings are embodied in the judgment-roll, which is as follows:

3 Supreme Court.

Trial desired in Greene county.

WILLIAM DONAHUE, Plaintiff,
against
WILLIAM BELDEN, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated January 24th, 1883.

HALLOCK, JENNINGS & CHASE,
Plaintiff's Attorneys.

Office address, Catskill, New York.

4 Supreme Court, Greene County.

WILLIAM DONAHUE, Plaintiff,
against
WILLIAM BELDEN, Defendant.

The plaintiff's complaint respectfully shows to the court—

I. That the plaintiff resides at Catskill, in the county of Greene and State of New York, and was at the time of the collision and loss hereinafter mentioned the sole owner of the steamboat Charlotte Vanderbilt, of the burthen of 585.74 tons or thereabouts, her boiler, engine, machinery, equipment, furniture, and appurtenances, and a common carrier of freight with said steamboat.

II. That at the time of the collision and loss hereinafter mentioned the defendant was the sole owner of the steam-propeller yacht or vessel known by the name of Yosemite, of the burthen of 481.57 tons or thereabouts, and having two high masts and constructed so that she could be propelled by either steam or sail, or both, and at the time of the collision had sails furled and was propelled solely by the power of steam.

III. That the said steamboat, Charlotte Vanderbilt, was a duly enrolled steam vessel under title L of the Revised Statutes of the United States, engaged in domestic commerce, and was duly inspected and licensed to run on navigable inland waters, including the navigable waters of the Hudson river, in the State of New York.

5 IV. That at the time of the collision and loss hereinafter mentioned the said steamboat had on board competent and skillful officers, including duly licensed pilots and engineers and a good and sufficient, competent and skillful, crew in charge of said steamboat, on duty, watchful, and on the lookout for the safe and proper navigation of said steamboat, and said steamboat had the proper regulation lights required by the laws of the United States and the rules and regulations duly made thereunder, properly set and brightly burning, and was in all things run and navigated according to law and the regulations thereunder.

V. That said steamboat Charlotte Vanderbilt, at or about seven o'clock on the evening of the 14th day of July, 1882, left Catskill on a voyage for New York city, with a quantity of freight thereon, and had proceeded in safety as far as a little north of the Esopus Meadow light-house, on the Hudson river, opposite the town of Esopus, in the county of Ulster, when she was met by said steam-yacht or vessel called the Yosemite, at about between nine and ten o'clock p. m. of the 14th day of July, 1882, and was then and there run down and sunk by said steam-yacht, and the steamboat Charlotte Vanderbilt was, together with her boiler, engine, machinery, equipments, outfit, furniture, appurtenances, and freight on board, totally lost and destroyed.

VI. That said steam-yacht Yosemite, at the time of said collision, was rigged with a steering wheel, roved ocean fashion, so that she was steered in the same direction that her wheel was turned.

VII. That said steam-yacht had on board of her a mast-head light

near the top of her foremast and a red light on her port side and a green light on her starboard side, but which colored lights were not properly set and were set only about one foot above the rail
6 and were so dim that they could be seen only a short distance, and were not such lights as were required by law.

VIII. That said steam-yacht, at the time of the said collision, had not the proper lights required by law to run on the waters of the Hudson river north of New York city or on inland navigation, and was running on said Hudson river with lights unknown and contrary to usage, custom, and law at the time of said collision.

IX. That said steam-yacht, at the time of said collision, was running in the night-time at an unusual and rapid rate of speed and at a speed of as great as about eighteen miles an hour, as the plaintiff is informed and verily believes to be true, and running at a rate of speed at which she could not be easily handled, guided, or controlled.

X. That said steam-yacht, at the time of said collision, was in command of a captain wholly unacquainted with navigation on the Hudson river north of New York city and in charge of a pilot wholly unacquainted with the navigation of said steam-yacht or any other vessel constructed as she was, with such a draft of water, speed, and steering gear and apparatus.

XI. That the defendant was at the time of said collision on board of said steam-yacht, and that he, his servants and agents, so negligently navigated, managed, guided, and controlled her that she was unlawfully and without cause or excuse run into said steamboat Charlotte Vanderbilt and caused her immediately to sink, together with her boiler, engine, machinery, equipments, outfit, furniture, appurtenances, and freight on board.

XII. That said collision did not occur through any fault or negligence of the plaintiff, his servants and agents, officers, and persons in charge of said steamboat Charlotte Vanderbilt, but said
7 collision was wholly caused by the negligence, mismanagement, and unskillfulness of the persons in charge of said yacht.

XIII. That the wreck of said steamboat Charlotte Vanderbilt, including her boiler, engine, machinery, equipments, outfit, furniture, appurtenances, and freight on board of her as sunk in the waters of the Hudson river, was sold at a public auction, on due notice given thereof, including notice to the defendant, for the sum of five hundred dollars, and which was the full value of the same.

XIV. That said plaintiff has been compelled to pay and has paid for said freight so sunk with said steamboat Charlotte Vanderbilt to the owners thereof the sum of six hundred dollars, which was the fair value of the same.

XV. That the value of the said steamboat Charlotte Vanderbilt, her boiler, engine, machinery, equipments, outfit, furniture, and appurtenances, was worth at the time of said collision thirty-five thousand dollars, and the value of her freight then on board of her was the sum of six hundred dollars, all of which was a total loss to the plaintiff, less the sum of $500 realized from the sale aforesaid,

and that said plaintiff has sustained damages by reason of said collision in the sum of $35,600.

Wherefore the plaintiff demands judgment against the defendant in the sum of thirty-five thousand six hundred dollars, besides the costs of this action.

HALLOCK, JENNINGS & CHASE,
Plaintiff's Attorneys.

Office address, Catskill, N. Y.

GREENE COUNTY, *ss:*

William Donahue, being duly sworn, deposes and says that he is the plaintiff in this action; that he has heard the foregoing
8 complaint read and knows the contents thereof, and the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes the same to be true.

WM. DONAHUE.

Subscribed and sworn before me January 24, 1883.
WM. HUGHES,
Notary Public.

Supreme Court, Greene County.

EMORY A. CHASE and WILLIAM J. HUGHES, as Executors, &c., of William Donahue, Deceased, Plaintiffs,
vs.
WILLIAM BELDEN, Defendant.
} Answer.

The defendant herein answers the plaintiffs' complaint as follows:

I. He has no knowledge nor information sufficient to form a belief as to any of the allegations of the first article of the complaint.

II. He admits each of the allegations of the second article of the complaint.

III. He has no knowledge nor information sufficient to form a belief as to any of the allegations of the third article of the complaint.

IV. He denies each and every allegation of the fourth ar-
9 ticle of the complaint, except that he admits that said steamboat Charlotte Vanderbilt had the proper regulation lights.

V. He admits that at about between 9 and 10 o'clock in the evening of the 14th day of July, 1882, a collision occurred in the Hudson river between the steamboat Charlotte Vanderbilt and the steamyacht Yosemite, from which collision the Charlotte Vanderbilt was sunk, but he denies that she was run down by the Yosemite, and allege that she ran herself against the Yosemite, and as to all the other allegations of the fifth article of the complaint he has no knowledge nor information sufficient to form a belief.

VI. He admits the allegations of the sixth article of the complaint.

VII. He admits that the Yosemite had at the time of said collision a mast-head light at the cross-trees on her foremast and a red light on her port side and a green light on her starboard side, and that they were set about one foot above the rail, and he denies each and every other allegation of the seventh article of the complaint.

VIII. He denies each and every allegation of the eighth article of the complaint.

IX. He denies each and every allegation of the ninth article of the complaint.

X. He admits that the captain of the Yosemite at the time of the collision was unacquainted with the navigation of the Hudson river north of New York city, but he denies that the navigation of said Yosemite was at the time under the charge or control of said captain, and he denies each and every other allegation of the tenth article of the complaint.

XI. He admits that he was at the time of said collision on board of said steam-yacht. He denies each and every other allegation of the eleventh article of the complaint.

XII. He denies each and every allegation of the twelfth article of the complaint, and avers that, on the contrary, the said collision was solely caused by negligence and want of care, watchfulness, and skill on the part of those on board of and in charge of the Charlotte Vanderbilt.

XIII. He has no knowledge nor information sufficient to form a belief as to any of the allegations of the thirteenth article of the complaint.

XIV. He has no knowledge nor information sufficient to form a belief as to any of the allegations of the fourteenth article of the complaint.

XV. He denies each and every allegation of the fifteenth article of the complaint.

Wherefore he prays that the complaint may be dismissed, with costs.

BENEDICT, TAFT & BENEDICT,
Defendant's Attorneys, 64 Wall St., New York, N. Y.

CITY AND COUNTY OF NEW YORK, *ss:*

William Belden, being duly sworn, says that he is the defendant making the foregoing answer; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

(S'g'd) WILLIAM BELDEN.

Sworn to before me this 26th day of March, 1883.

KINAHAN CORNWALLIS,
Notary Public, New York County.

11 At a circuit of the supreme court of the State of New York held in and for the county of Ulster, at Kingston, this 17th day of June, 1887.

Present: Hon. Samuel Edwards, justice.

EMORY A. CHASE and WILLIAM J. HUGHES, as Executors of the Last Will and Testament of William Donahue, Deceased,
against
WILLIAM BELDEN.

The issues in this action having been brought on for trial at a circuit court held at the court-house, in the county of Ulster, on the 13th day of June, 1887, and the issues having been tried and a verdict for the plaintiffs for the sum of twenty-five thousand nine hundred and ten dollars having been rendered by the jury on the 17th day of June, 1887, and the defendant having then moved, upon the minutes of the judge presiding, that the verdict be set aside and a new trial granted upon the exceptions and upon the ground that the verdict is excessive, contrary to the evidence and contrary to law, and generally upon all the grounds specified in section 999 of the Code of Civil Procedure, and after hearing Luther R. Marsh, Esq., of counsel for the defendant, in support of said motion, and Peter Cantine, Esq., of counsel for the plaintiffs, in opposition thereto, it is, on motion of Hallock, Jennings & Chase, attorneys for the plaintiffs—

Ordered that said motion be, and the same hereby is, in all respects denied.

SAMUEL EDWARDS,
Just. Sup. Court.

A true copy order signed as above and entered in Ulster county.
[L. S.] ISRAEL SNYDER,
Dept. Clerk.

12 Supreme Court, Ulster County.

EMORY A. CHASE and WILLIAM J. HUGHES, as Executors of the Last Will and Testament of William Donahue, Deceased, Plaintiffs,
ag-inst
WILLIAM BELDEN, Defendant.

Judgment, June 20, 1887.

Hallock, Jennings & Chase, plaintiffs' attorneys.

The issues in this action having been brought on for trial before Justice Samuel Edwards and a jury at a circuit court held at the court-house, in the county of Ulster, N. Y., on the 13th day of June, 1887, and the issues having been tried and a verdict for the plaintiffs, Emory A. Chase and William J. Hughes, as executors of the last will and testament of William Donahue, deceased, for $25,910, hav-

ing been duly rendered by the jury on the 17th day of June, 1887, now, on motion of Hallock, Jennings & Chase, attorneys for the plaintiffs, it is—

Ordered and adjudged that the plaintiffs, Emory A. Chase and William J. Hughes, as executors of the last will and testament of William Donahue, deceased, recover of William Belden, defendant, the sum of twenty-five thousand nine hundred and ten dollars, found by the jury, and seventeen hundred and fifty-eight dollars and twenty-six cents, costs as taxed, making in all twenty-
13 seven thousand six hundred and sixty-eight dollars and twenty-six cents ($27,668.26), and that plaintiffs have execution therefor.

JACOB D. WURTS, *Clerk.*

N. Y. Supreme Court.

EMORY A. CHASE and WILLIAM J. HUGHES, Executors, &c., *against* WILLIAM BELDEN. } Case and Exceptions.

This case came on for trial June 13th, 1887, before Mr. Justice Edwards and a jury.

Messrs. Emory A. Chase and P. Cantine appeared for plaintiff, Messrs. Luther R. Marsh and Wm. G. Wilson for the defendant.

It is admitted by the parties that William Donahue, who was the plaintiff in this action when it was begun, was the sole owner of the steamboat Charlotte Vanderbilt at the time of the collision mentioned in his complaint, and had a bill of sale therefor, in the form required by law, duly recorded in the custom-house at the port of Albany Sept. 25th, 1880; that on the 10th day of May, 1880, a mortgage was given on said Charlotte Vanderbilt (a purchase-money mortgage), her engines, tackle, furniture, and appurtenances, for the sum of $25,000 to the N. Y., Catskill and Athens Steamboat Co., Limited, and that on the 15th of Sept., 1880, in the city of New York, the said steamboat was sold at public auction under foreclosure of said mortgage, and on said sale she was struck off and purchased by Wm. Donahue, of Catskill, for the sum of $12,000,
14 he being the highest bidder therefor; that the said steamboat was, by the provision referred to already in the complaint, a total loss, and that the said Donohue remained the sole owner of the claim against the defendant for the damages charged in the complaint that have resulted by the said collision and for the recovery of which this action is brought up to the time of his death, which occurred Feb. 20th, 1883; that he died a resident and inhabitant of Greene Co., in the State of New York; that he made his last will and testament, bearing date Feb. 12th, 1883, in which he nominated and appointed Wm. J. Hughes and Emory A. Chase, of Catskill, as the executors thereof; that on the 7th day of March, 1883, said will was duly admitted to probate in the surrogate's court of Greene county, N. Y.; that letters testamentary were duly issued March 7th, 1883,

to the said W. J. Hughes and Emory A. Chase, as executors named in said will, and that they duly qualified and entered upon their duties as such executors and still are such executors; that after the death of said Wm. Donahue, on the 20th day of March, 1883, by an order duly granted on consent of defendant, at a special term of this court, this action was continued in the name of Wm. J. Hughes and Emory A. Chase, executors of the said last will and testament of Wm. Donahue, deceased, and that their names, as such executors, were substituted in the place of said William Donahue, deceased; that the summons and complaint of the said William Donahue, deceased, be deemed and taken as the summons and complaint of said executors.

Plaintiff read in evidence the certificate of enrollment, the license, and the certificate of inspection of the Charlotte Vanderbilt. See p. 285.

Plaintiff also read in evidence the license, enrollment, and the certificate of inspection of the yacht Yosemite.

15 "E, C. A. P."

(Copy.)

(N. Y. Cat. No. 516.)

General customs regulations of 1874. Form 17.

Official number: Numeral, 27616. Letters, —.

License of a yacht, of twenty tons and upwards, to proceed from port to port of the United States and by sea to foreign ports without entering or clearing at the custom-house.

In pursuance of chapter two, title XLVIII, "Regulation of commerce and navigation," of the Revised Statutes of the United States, William Belden, of New York city and State, and Seth N. Eldridge, master, having given bond that the steam-yacht called the Yosemite, whereof the said William Belden, of New York, State of New York, is owner, burden 481 tons and 51 hundredths of a ton, as appears by her enrollment, numbered 135, and dated at January 20, 1881, used and employed exclusively as a pleasure vessel, and designated as a model of naval architecture, shall not, while this license continues in force, transport merchandise or carry passengers for pay or engage in any unlawful trade, nor in any way violate the revenue laws of the United States, and shall comply with the laws in all other respects—

License is hereby granted for the said yacht called the Yosemite of New York to proceed from port to port of the United States and by sea to foreign ports without entering or clearing at the custom-house, but not to be allowed to transport merchandise or carry passengers for pay. This license to continue and be in force for
16 one year from the date hereof or until the return of the said yacht from a foreign port, and no longer.

Given under my hand and seal, at the port of New York, in the district of New York, this 27th day of May, in the year one thousand eight hundred and eighty-two.

R. WYNKOOP,
Collector of Customs. [L. S.]

L. R. MAY,
Naval Officer. [L. S.]

CUSTOM-HOUSE, NEW YORK, *January* 23, '83.

I hereby certify that the within is a copy of the record of license of the steam-yacht Yosemite, of New York, as it appears upon the bonds of this office.

J. MEREDITH,
D. Collector. [L. S.]

"F, C. A. P."

Enrollment No. 135.

Official number: Numeral, 27616. Letters, —.

THE UNITED STATES OF AMERICA.

Sec. 4319, Rev. Stats. (N. Y. Cat. No. 389*c*).

Copy of Enrollment.

Enrollment. In conformity to the title L, "Regulation of vessels in domestic commerce," of the Revised Statutes of the United States.

*William Belden, of New York city and State, having taken and subscribed the oath required by law, and having sworn that he† is a citizen of the United States and sole owner of the ship or
17 vessel called the Yosemite, of New York, whereof John H. Avery is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Chester, State of Pa., in the year 1880, as appears by ‡her enrollment No. 122, issued at New York Dec. 29, 1880, now cancelled, property changed and said enrollment having certified that the said ship or vessel has two decks and two masts, and that her length is 182 feet, her breadth 23.8 feet, her depth 18.7 feet, her height — feet; that she measures 481 and $\frac{51}{100}$ths tons, viz:

	Tons.	100th.
Capacity under tonnage deck	481	51
Capacity between decks above tonnage deck	--	--
Capacity of inclosure on the upper deck, viz:	--	--
Total tonnage	481	51

That the following-described spaces and no others have been omitted, viz:

And that she is a §steam-yacht (iron), has a plain head and round stern, and ||Wm. Belden having agreed to the description and meas-

urement above specified and sufficient security having been given according to the said title, the said ship or vessel has been duly enrolled at the port of New York.

Given und ermy hand and seal, at the port of New York, in the district of the city of New York, this 20th day of January, in the year one thousand eight hundred and eighty-one.

[SEAL.] R. WYNKOOP,
Deputy Collector of Customs.

[SEAL.]
J. J. COUCH,
Deputy Naval Officer.

* Insert here the name of the person, with his occupation and place of abode, by whom the oath or affirmation is to be made.

18 † If more than one owner, insert the words "together with" and the name or names, occupation or occupations, place or places of abode of the owner or owners, and the part or proportion of the vessel belonging to each owner.

‡ Here describe previous document.

§ Insert here the particular kind of vessel, whether ship, brigantine, scow, schooner, sloop, or whatever else.

‖ In every original enrollment insert the following: "The said —— —— having agreed to the description and measurement above specified, and."

DISTRICT OF THE CITY OF NEW YORK,
PORT OF NEW YORK, COLLECTOR'S OFFICE.

I hereby certify the within to be a true copy of the original record in this office. Given under my hand and seal of the collector this 23d day of January, 1883.

[SEAL.] J. W. MEREDITH,
Deputy Collector.

"G, C. A. P."

By authority of the United States of America.

Certificate of Inspection for Passenger Steamers.

Passenger steamer Yosemite. This certificate expires May 24th, 1883.

STATE OF NEW YORK, *District of New York,* } *ss:*

Application having been made in writing to the undersigned, inspectors for this district, to inspect the steamer Yosemite, of New York, in the State of New York, whereof William Belden is owner and S. N. Eldridge is master, having performed that duty on the 24th day of May, 1882, do certify that said vessel was built at Chester, in the State of

19 Pennsylvania, in the year 1880; that the hull is constructed of iron, and, as shown by official records, is of 481.51 tons

burden; that said vessel has seven state-rooms and ten berths, and is allowed to carry ten passengers, viz., ten first cabin, — second cabin, and — deck or steerage passengers; also is required to carry a full complement of officers and crew, consisting of one master or pilot, one mate, three engineers, 28 crew; that the said vessel is provided with one engine of 28½ by 40 inches diameter of cylinder and 2½½ feet stroke of piston, and 2 boilers 12 1 3/2 feet in length and 11 feet in diameter, made of steel .729 thick, in the year 1880, and is allowed a steam pressure of 114 pounds to the square inch, and no more. The said vessel is permitted to navigate for one year the waters at any ocean route between —— and touching at intermediate ports, a distance of about — miles and return.

The following particulars of inspection are enumerated, viz:

Life-boats: Four.
Life-rafts: One.
Metal life-boats: One.
Wood life-boats: Three.
Drags: One.
Anchors and cables: Two.
Cork life-preservers: Forty.
Hose: 200 feet.
Hand fire pumps: Two.
Stoves securely fastened to deck? Yes.
Has wire tiller ropes? Yes.
Has iron rods or chains.
Has wire bell-pulls? Yes.
Has signal tubes from pilot-house to engine-room? Yes.
Has oars and life-lines? Yes.
Fire buckets: Forty-four.
Water barrels: Two.
Water tanks.
Axes: Six.
Has permanent stairways from main to upper deck? Two.
Safety valves: Three.
Safety valves: Dimensions, 72½ inches.
Safety valves: Weights adjusted at 114 lbs.
Gauge cocks: Eight.
Low-water gauges: Two.
Fusible plugs: Two.
Locked-up safety valves.
Boilers: Two.
Boilers—when built: 1880.
Boilers—by whom built: John Roach & Son.
Boilers, thickness of: .729.
Boilers, tensile strength of: 64,000 lbs.
Flues: —.
Flues — diameter.
Flues — thickness.
Boilers, ductility of: 50 per cent.
Tubes: 376.
Tubes—diameter: 3¼ inches.

Tubes—length: No. 12 W. G.
Longitudinal seams; double-riveted holes drilled.
Spark-arresters.
Steam and water connection between boilers? Yes.
Steam pumps, double-acting: Two.
Pipes to carry steam into hold? Yes.
Watchmen: One.
Has three water-tight bulk-heads? Yes.
Has two copies steamboat law on board? Yes.
Has name in letters six inches long on side of pilot-house? Yes.
Has signal lights? Yes.
Location of steam whistle? Yes.
Has additional steering apparatus, consisting of relieving tackle.
Feed-pumps for boiler: Two, 7 ins. by 12 ins.

(Signed) AUSTIN JAYNE,
Inspector of Hulls.
JOHN K. MATHEWS,
Inspector of Boilers.

21 CITY AND COUNTY OF NEW YORK, } ss:
State of New York, }

Sworn to before me this 29th day of May, 1882.

(Signed) JOHN H. SMITH,
Notary Public.

CUSTOM-HOUSE, NEW YORK, *January* 23, 1883.

I hereby certify that the above certificate is a true copy of the original on file at this office.

J. W. MEREDITH. [SEAL.]
Deputy Collector.

The above form of inspection certificate was adopted by the board of supervising inspectors at the annual meeting held in January, 1880.

JAMES A. DUMONT,
Supervising Inspector General, President of the Board.

Approved February 13, 1880.

JOHN SHERMAN,
Secretary of the Treasury.

22 The plaintiff, to maintain the issues on his part, called FREDERICK BELL, who, being sworn, testified:

I reside in Troy. I formerly resided in Malden. I am a steamboat pilot. I have been a steamboat pilot about twenty years. I have been pilot upon the steamboats Thomas Powell, Champion, Sunnyside, Saratoga, and City of Troy. The City of Troy and Saratoga form what is known as the Citizens' line, running between Troy and N. Y. city. It is fifteen years this spring since they started. I have been a pilot upon the Saratoga and City of Troy

during the last ten years. Before I was pilot on a steamboat I had been engaged in navigating sloops and schooners on the river. These Troy boats are night boats. They leave Troy at 7.45 in the evening. They leave New York at 6 o'clock p. m. One boat went down one night and on the same night the other boat came up. A boat left each city every night except Saturday nights. I recollect going down the river on the night of July 14th, 1882. I was sworn as a witness on the former trial of this case in April, 1884. We met a steam-yacht on our downward trip about abreast of old Oak Hill dock. It is about half a mile from Catskill Point dock, the upper end of it, to Oak Hill dock. I was in the pilot-house on the steamboat Saratoga at that time. I was the first pilot on that night and actually in charge of the wheel as pilot at this time I describe. When I saw her I did not know what it was. I saw a light and that is the first thing that I seen. I called my lookout's attention to it. I seen a high white light. I could not make out what it was at the time until we approached or got very near to her; then I undertook to blow two whistles to go to the eastward of her; at that time I got a blast of the whistle. I answered with one whistle. We hove over port and came along by. I looked out of the window and saw it was a yacht. That was the first I had been able to determine it was a yacht. When I got right alongside I saw a dim red light on this yacht. I had seen no colored light up to that time. At the
23 time I saw this dim red light we had headed off—we were passing right alongside her. We were probably about 60 feet distant. We passed on the starboard side, on the west side of the river. We passed down the river on the west side and the yacht came up the river on the east side of us. I did not at any time observe any green light on that yacht. I had not seen any light of any kind on this vessel except this high light until I got down substantially alongside. I know what colored lights are required on steam vessels navigating the Hudson river—green and red; green on the starboard side and red on the port. The green light is placed so that it shows right dead ahead; it don't show aft; it has got a screen board to hide it so it don't show across; you can't see it across the bow.

The red light is adjusted and fixed in the same way on the port side. All steam vessels running on the Hudson river have those colored lights on them in the night-time if they run according to our rules and regulations that we are licensed to run by.

Q. If this steam-yacht had had a green light near her bow in the place that you have described on her starboard side, as you came down the river that night, would you have been able to have seen it?

Objected to on the ground that it called for possibilities and contingencies and that many elements might enter into that.

A. Yes, sir.

Q. If she had had a red light on the port side, such as the laws and regulations require, would you have been able to have seen this red light before you did see it?

Objected to on the same ground as to the former questions, and that witness has stated he did see a red light. Objection overruled. Defendant excepts.

A. Yes, sir; in coming down the river I was a mile and a half or two miles from this steam-yacht before I observed this high
24 light on her. I kept my eye on that light and where it was from the time I first saw her until I met her.

Q. If this red light had been displayed at the place where you mentioned it to be and it had been a good bright red light, would you have been able to have seen it before you did see it?

Same objection as before. Same ruling and exception by defendant.

A. Yes, sir.

Q. When you first saw this high white light were you able to determine if it was on a vessel or if on a vessel what the character of the vessel was?

Objected to as immaterial. Overruled and exception.

A. I could not.

Q. In view of that fact did you keep particular watch to see if you could discover other lights to determine what it was?

Objected to so much of the question as begins "In view of that fact," calling for a reason. Objection overruled. Defendant excepts.

A. I did; I did not discover any other light than this high white light until I discovered this red light at the time I have mentioned.

Q. Did you notice in passing this vessel whether you saw any lights from any windows in the yacht?

A. Well, when she got right alongside of us she had bull's-eyes.

Q. Describe what kind of lights they are.

A. Round glass that goes in the side of the vessel.

Q. They give light in below the decks?

A. Yes, sir; same as ships have.

(COURT:)

Q. What time was this when you saw it?

A. Between half past eleven and twelve o'clock; I think about twelve o'clock; it was not far out of the way one way or the other. That is about our time; generally our time at Hudson is about eleven o'clock, a little later some nights and some nights a little earlier, according how we are detained. It was a dark night;
25 it rained some, south wind; it was a bad night on the upper end of the river. At the time we were down at Catskill it was dark. When we passed Catskill I rather think it was not raining any; it might have misted a little bit, but not hard rain at that time.

Q. From your experience in running as a pilot on the Hudson

river on such a night as that how far would a good bright red light show?

Objected to as incompetent and immaterial. Objection overruled. Defendant excepts.

A. Well, about two miles, I should think; a mile and one-half or two miles; good bright red light.

Q. How far would a good bright green light show such a night as that?

A. Calculate about the same; they do not exactly; green light don't show quite as far as the red one, but there is not much difference.

Q. Have you in your experience as a pilot before this night met vessels navigating the Hudson river with this high foremasted light?

Objected to as immaterial what other vessels carried; it is a question of the construction of the statute what lights we ought to carry; the meaning of the statute is not determined in regard to which those who run a steamboat may entertain. Objection overruled. Defendant excepts.

A. I have not. I had seen the steamboat Charlotte Vanderbilt. She had a main deck, a promenade deck, and a hurricane deck. The skylight is a deck that sets right in the centre of this hurricane deck; that is to light from the hurricane deck down into the state-room hall. The pilot-house on the Vanderbilt was placed forward. The construction of the Vanderbilt is substantially the same as all the other river steamboats that carry one tier of state-rooms. If they have two tiers of state-rooms they are raised up still higher. On all steamboats on the Hudson river which are constructed carrying state-rooms, either with one or two tier of
26 state-rooms, the lookouts are stationed on the forward deck down forward. The lookout has a right to be in or about the pilot-house.

Q. Do you have any lookout beyond what you have in or about the pilot-house?

Objected to on the ground that the lookout required is a question of law and not of custom of other vessels.

(Mr. CANTINE:) I ask for all these kinds of boats; if in the running of his vessel our lookout was placed where it was customary to place them in that kind of vessel.

Objection overruled. Defendant excepts.

(DEFENDANT'S COUNSEL:) Further objection, it is incompetent to show where one particular boat carries it.

Q. Do steamboats having state-room halls with one or two tiers of state-rooms, which are constructed as you have described, on the Hudson river have any lookout besides the one that is in or about the pilot-house?

Same objection, ruling, and exception.

A. That is the only place I know of. I don't know of any steamboats that carry them any other way. They could communicate with the pilot readily if stationed at any place forward alongside the pilot-house. The pilot-house is about forty-feet above the water on these kind of boats such as I have described. It would be about eighteen feet above the main deck at the bow of the boat to the pilot-house. If a lookout was stationed on the lower deck way out at the bow of the boat on steamboats constructed as I have described, carrying state-rooms and with a pilot-house placed some 50 or 60 feet astern from the bow of the boat, a lookout could reasonably communicate to the pilot.

Cross-examined:

This yacht was about two miles off when I first saw it. The general direction of the river is not straight there. It is a
27 little cross over from the upper end of Catskill point to Oak Hill. I don't know how the Yosemite was headed when I first sighted her. I did not know how she was headed until she blew the whistles. I then supposed it was a vessel coming up the river. She had nothing to show me she was headed anyway. I don't know whether she was headed for the east shore or not. If she had been headed for the east shore I could not have told whether she had a green light or not.

Redirect examination:

If she had been headed for the east shore I could have seen the white light and the red light if she had one.

Q. In coming down the river that night before you got to Catskill Point house, I want to ask you if you could not see down the river by looking over the flats between where the Catskill Point house is, etc., and sheds—if you could see any part down the river before you actually got opposite Catskill point.

A. In a clear night, coming down about, well, a quarter of a mile, I think, above Catskill point, I think you can. I know you can look over it and see a steamboat's lights. I saw this high light about a mile or a mile and a half before I met the vessel. I was at the upper end of Catskill Point dock.

Q. Placing yourself there, if I understood you to answer rightly, you say that the old Oak Hill dock is only about one-half mile below there. How do you reconcile that statement with the statement which you have sworn to: that you have seen the high light from a mile to a mile and one-half before you met the vessel?

A. After we opened the point.

(COURT:)

Q. Where did you say you were; at what dock?

A. When I first saw her, above Catskill Point dock; upper end of it; that is one-half mile from the Oak Hill dock; it was about op-

posite Oak Hill dock where I met the yacht. From the time
28 I first saw her until we met we had run that one-half mile and the yacht had been running up the river. I should think the channel of the river at Catskill and from there down to Oak Hill dock is about 1,000 feet wide. From the Esopus light up to the Rondout light the channel, I should think, is not over 2,000 feet wide; it is pretty wide down in that bend. The distance between the Rondout light and the Esopus light is about five miles; might be a little short of that. From Catskill to Esopus light is about 27 or 28 miles. From the Esopus light to the Battery in N. Y. is about 90 miles. In running down opposite from Rhinebeck until you pass around Esopus meadows there are two courses; you can't steer a steamboat on one course from Rhinebeck to Esopus light. In going down we would first head for about Esopus light-house. If I was in the middle I would steer for about the lower ice-house; lower Esopus light-house. When I got down in the vicinity of the lower ice-house I would haul over for about Dinsmore's; a little to the north of Dinsmore's. Of course there is a big bend in the river there. In running these courses I usually calculate to keep in the best part of the river, in the middle of the river; sometimes we get a little to one side. In going up the river, after you had turned Esopus light, you can't run into one course up to Rhinebeck bluffs or opposite Rhinebeck bluffs, headed substantially on Rhinebeck bluffs. You would fetch up on the flats called the Swaney plat. You would have to change your course.

Recross-examination:

In going down the river we change our course in the neighborhood of Port Ewen. We go gradually around to the eastward; when we get down half way between Port Ewen and Big Rock point we will begin to swing a little more eastward. About half way between the ice-house and the Esopus light we would
29 haul over for Dinsmore; that would be almost straight across the river. When we met the Yosemite that night I rather think she slowed up.

Q. Was not she at a standstill almost?

A. She did not have her anchor out, because if she did she would not have that red light there and this green light that she claimed she had; if she was at anchor she would lay an anchor without that light. I heard that the Yosemite did bring up and anchor at Catskill for the night there.

Q. Might not the time when you met her, that you have been testifying to, be the time when she was coming to a standstill?

A. They don't anchor right there.

Q. But close by there?

A. A little ways above there, at Oak Hill R. R. station. They would not anchor right in the middle of the river or about in the middle of the river down at Oak Hill iron dock, unless they used very poor judgment. I know the Yosemite laid to anchor afterward about a quarter of a mile above where we met her. I believe she did anchor that night. I don't know whether she did or not.

JAMES MULLIGAN, being sworn, testified in behalf of plaintiff as follows:

I reside in Cornwall. I have been pilot seven years of tow-boats and passenger-boats—steamboats. I have been pilot on the steamers Washburn and Newburgh. Before I was a pilot on steamboats I had been engaged on sailing vessels in navigation. I took charge of a brick schooner for Mr. Uriah F. Washburn 16 years. My steamboating has been confined to the Hudson river. I have navigated sail vessels on the Hudson river and as far east as New Bedford and Boston. In 1882 I was employed on the steamboat Alicia A. Washburn. I recollect going down the river on an evening in the summer, five years ago this coming summer, and meeting a yacht with a high mast-head light. I recollect hearing a day or two after I met this yacht with a high mast-head light that there had been
30 a collision between the Yosemite and the Charlotte Vanderbilt. I met this yacht between Hyde Park and Crum Elbow. I met this yacht about five miles, maybe a little more or a little less, below the Esopus light. I went down the west side of the river, and she went up on the east. When we passed we were about 150 feet apart. We were both about in the middle of the river, as near as you can get. The only light I saw on the yacht was a mast-head light. It was a small, bright light. When I got abreast abeam I saw a very dim red light; she showed the port-hole lights and sides. These port-hole lights are to give air and light below the decks and not to navigate by. She did not show any green light that we could see. When I first observed this high mast-head light we were just about a mile distant; she had come around from behind a point. Just as soon as she opened this head we saw her high light. Our boats were head on. After we were head on her green and red lights should then have shown to us. I did not see any green light at all. I first saw the red light when she got abreast the beam.

Q. On such a night as that was, if she had had a good bright green and red light, would they have been clearly visible from the point when you first discovered the high white light on her?

Objected to. Objection overruled. Defendant excepts.

A. Yes, sir.

I am now on the steam propeller Newburgh, carrying passengers and freight and running between Newburgh and New York.

Q. And how long have you been pilot on her?

A. I went on her the first of last June.

Cross-examination by Mr. WILSON:

In April, 1884, I was on the Alicia Washburn, running on the North river. I lived in Cornwall. I was not asked to testify on the former trial of this action. I do not know how I came to be
31 asked to testify on this trial. I have not talked with any people about this case. I knew it was going on in court. I said nothing to anybody about my knowing the circumstances. A man

asked me if I was on the river that night and I told him yes. At the time I met this yacht it was a pretty dark night. When I first sighted her I could not make out her hull. I saw nothing but this white light. I could not make out her hull until I was within about ¼ of a mile; then I could see merely a black object. When I first saw this white light I knew that our boats were head on, because I could see her straighten up the river, see by the slew of the lights; she had to straighten up or go ashore to the westward. If she had been heading two points to the east of our boat we could have seen a red light. The only way I know she was headed she took a rank sheer and went to the eastward. When she passed us she was headed about north and we were headed south; she got across our bow by sheering; she gave a rank sheer to the east; we were in the middle of the river, pulling a tow against flood tide, and when she took this rank sheer she headed about northeast; before she gave this sheer she was headed to the westward; by the compass it would have been about north or northwest, maybe not so far, and the rank sheer brought her headed north-northeast; she passed us 150 feet to the east and was then headed north; all this was in the space of about a mile. The sheer did not take place until we got near enough to see her hull. The last sheer to the eastward was when she was about 200 to 300 feet from us; it might have been more. I know she gave a rank sheer because she was coming in line right ahead of us; she had to take a rank sheer. I know she was coming in line dead ahead of us because I could see a black object ahead of us. I could not tell whether it was a boat ahead of us until she sheered. I knew it was a boat of some kind. I saw her red light just across the beam; we did not see the red light when she went across our bow; it did not appear to show.

32 The reason why we did not see her red light when she was directly in front of our bow was that she had her side lights too low to show from her bow or side. We did not see her red light until we looked down on the deck; it would not make any difference in seeing the red light if she was dead ahead of us or on our own beam if she had a light there; we could not see it when her broad side was exposed to us dead ahead; we could see it when it was not broadside. I am sure it was a very dim light. I have neither talked nor thought about this matter since the night that the event occurred. It all comes up fresh to my mind five years afterward without any intermediate thought. I know it was that yacht we passed because she had broke up two or three tows, and we had not passed another yacht. At the time we passed this yacht I could not say that I knew it was the Yosemite. I thought it was. I could see she was a yacht; she was not the only yacht that ran on the river; there were several, I think. I could distinguish her from any other on that night by her side lights and mast-head lights; never could see her side lights; she passed us two or three times during that season and next season. Most steam-yachts look alike in the dark; some have better lights than others. There is not a prejudice against these steam-yachts on the part of the boatsmen on the river. I did not have any prejudice; sometimes they used to

JAMES MULLIGAN, being sworn, testified in behalf of plaintiff as follows:

I reside in Cornwall. I have been pilot seven years of tow-boats and passenger-boats—steamboats. I have been pilot on the steamers Washburn and Newburgh. Before I was a pilot on steamboats I had been engaged on sailing vessels in navigation. I took charge of a brick schooner for Mr. Uriah F. Washburn 16 years. My steamboating has been confined to the Hudson river. I have navigated sail vessels on the Hudson river and as far east as New Bedford and Boston. In 1882 I was employed on the steamboat Alicia A. Washburn. I recollect going down the river on an evening in the summer, five years ago this coming summer, and meeting a yacht with a high mast-head light. I recollect hearing a day or two after I met this yacht with a high mast-head light that there had been
30 a collision between the Yosemite and the Charlotte Vanderbilt. I met this yacht between Hyde Park and Crum Elbow. I met this yacht about five miles, maybe a little more or a little less, below the Esopus light. I went down the west side of the river, and she went up on the east. When we passed we were about 150 feet apart. We were both about in the middle of the river, as near as you can get. The only light I saw on the yacht was a mast-head light. It was a small, bright light. When I got abreast abeam I saw a very dim red light; she showed the port-hole lights and sides. These port-hole lights are to give air and light below the decks and not to navigate by. She did not show any green light that we could see. When I first observed this high mast-head light we were just about a mile distant; she had come around from behind a point. Just as soon as she opened this head we saw her high light. Our boats were head on. After we were head on her green and red lights should then have shown to us. I did not see any green light at all. I first saw the red light when she got abreast the beam.

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run pretty close to the tows and break them adrift. I don't like the way they carry their lights; they don't carry them exactly right. I regard those yachts sort of a nuisance to the other things.

JEREMIAH WHITAKER, sworn for the plaintiff, testified: I am 48 years of age, and live in Hudson. I am by occupation a boatman. I have now a license as a pilot, and have had, this makes the eleventh year; during these last eleven years I have been employed in
33 business as a pilot on the waters principally of the Hudson river, running from, say, New York up the river as far as Troy. I was the pilot in charge of the Charlotte Vanderbilt on the night of July 14th, 1882. That was the night the collision took place and the Charlotte Vanderbilt was sunk. Before I was a licensed pilot I had followed the water from a boy about 12 years old. I went cook with my father on the sloop Illinois. After I was cook I went as what they call "common hand" on the Hudson river on a sloop. Then I went first man (mate); it is the same as mate; they call it first hand; it is what they call pilot, but they called it first hand in those days on a sailing vessel. You don't have to have a license as pilot on a sailing vessel. I couldn't tell how many years I acted as pilot on a sailing vessel. It was for a number of years. First hand is in fact a pilot on a sloop and they don't have to have a license. After I was first hand and such pilot on a sloop my next position was steamboating. I did not go at once as a pilot on a steamboat. The first boat I went on was the "Alida," towing from Albany to New York. I "fired" on her. Then I went on the "Madison County," with Capt. Rogers, who is on the "Eagle" now, I think. I went as pilot. I didn't get any pilot's license that year because the season was so short, and Capt. Rogers told me if I intended to stay aboard the boat with him I would have to get a license, and the license cost five dollars in those days, and the season was so short I told him I didn't think I would get it that year. I did not get it the next year. Then I didn't go on a steamboat again for probably, it might have been, three or four years, but went on a sailing vessel with my father as first hand and pilot. I in fact steered the vessel; stood regular watch the same as the captain. You have got to take the vessel along half of the time; the first hand takes half of the time as pilot and the captain half of the time as pilot, the same as on a steamboat. He takes his watch
34 the same as on a sailing vessel. After three or four years of this slooping I then went on a steamboat. I went on the "Francis Harder," on Cornell's line from Newburgh, as a pilot. Then I got a license, and I have been a licensed pilot ever since.

Up to the time of this accident I was a licensed pilot. On July 14th, 1882, I was on board the Charlotte Vanderbilt as such pilot, running her down the river. On that day I started with the Vanderbilt from Catskill. Before I got to Catskill that day I came from Athens. We had been calking the boat and putting in some new pieces here and there of plank at Athens. For the purpose of doing that she was hauled out; she laid on the dry-dock hauled out. I

can't recollect how long she was hauled out; I don't remember; it was only a few days. She was launched on July 14th from the dry-dock; she was launched somewheres, I think, in the neighborhood of two o'clock; somewheres around there. After she was launched I came with her to Catskill point from Athens. At Athens she was hauled out at Magee & Van Loan's ship yard. When she got to Catskill she was coaled up. She was towed down to Catskill from Athens by the tug-boat Ambition.

Q. Where did her crew go aboard of her—at Catskill or Athens?

A. I don't know. Some of them were aboard at Athens. I don't know whether they were all on board or not. I couldn't say that.

Q. Do you recollect when you started from Catskill how many her crew consisted of or how many, about?

A. Well, sir, I don't know how many was aboard, only what I have been told since. I don't know anything about how many was aboard of her. I recollect about the time when she started from Catskill point to New York; it was ten minutes past seven o'clock in the evening. She had no freight on her; she was light—empty.

Q. Do you know if she had any passengers on?

A. Capt. Wolf had his wife and daughter on board. All the passengers she had on were Capt. Wolf, his wife and daughter. That is all that I know of; they were part of his family. From
35 the time I left Catskill up to the time of this collision the boat had not been stopped to make any landings.

Q. In your judgment, about what speed did the boat run at in running from Catskill point down to the place where the collision was—speed per hour?

A. Well, I should judge she was making about ten miles per hour. Probably on an ebb tide she would make that, but when we struck flood tide we didn't make quite so much. When I left Catskill the tide was running down—ebb tide.

Q. How long did the ebb tide keep you?

A. It lasted to Barrytown, and there was slack water at the Hogsback, just above Barrytown.

Q. How far did you get before you struck the flood tide?

A. Between Barrytown and Rhinebeck.

Q. Did the flood tide keep you until the time of the collision?

A. Yes, sir. We drifted up after the yacht run through us.

Q. About how far is it from Rondout light to the Esopus light?

A. I have been told six miles; that is all I know about it. From my experience as a boatman, traveling up and down the river, I would judge that would be about the distance. After I passed Rhinebeck I steered for the upper ice-house; there are two ice-houses on the west shore between Port Ewen and Esopus light. I could not say whether the Knickerbocker ice-house is the upper house or not. The other is Terpening's ice-house; that is the lower one of the two. In steering for the upper ice-house that night from Rhinebeck down I kept my vessel about in the middle of the river as near as I could. In order to do that I would steer for the west land of the ice-house, about in the range of the ice-house, until I

passed, and then hauled for the lower ice-house. You don't really change your position much as to the channel of the river. When I hauled off to the lower ice-house I kept on to the westward of the
Esopus light. My bow was headed just westward of the
36 Esopus light. I think just before I got to the lower ice-house
I headed her off—headed on Dinsmore's. That is on the east side of the river.

(Map marked Exhibit A shown witness.)

The places marked on the map as Rondout light, Esopus light, and Dinsmore's are correct. The place where the dark lines are put indicate the Esopus flats. Right opposite to the place marked Eblersly's there is a flat called the Swaney plat.

There is a little narrow channel goes into Kelley's dock.

The point marked Knickerbocker wharf is what I understand to be Terpening's ice-house. Port Ewen appears on the map; Rhinebeck, Slate Dock ice-house, Kingston point appears on the map. The map indicates the river from there down around Esopus light—a correct representation. There is a bend in the river just below Dinsmore's; we have to double around to get around Esopus light.

The plaintiff then put in evidence a map of the river, which was marked Ex. A and was taken subject to correction from official map. See end of book.

From the time we left Rondout light until the collision we run down pretty well the middle of the river until we met a sail vessel just about the upper ice-house. I had to sheer to westward to get under her stern. When we got by her I hauled off. At that point we were not much west of the centre of the channel of the river. We did not take much of a sheer there. At the time we got opposite the lower ice-house we were about in the centre of the channel. In running from there down to the place of the collision we were headed for Dinsmore's, way off to the eastward. We kept east of the centre of the river all the time from then until the collision. The first lights that I observed in going down the river after we passed Rhinebeck was a red light on sail vessel beating up. After that I observed a light that proved to be on the yacht Yosemite. I first observed it when I was down between the two ice-houses. I
saw three bright lights—white ones—I thought they were on
37 a tow—two low lights and one high one. I supposed the two
lights were on the canal-boat on a tow.

Q. Where did they appear to be—those two white lights?

Objected to. Objection overruled. Defendant excepts.

A. I took them to be on a tow—hawser tier of a tow going down south. I took the high light to be a steamboat's after-stern light. A steamboat towing other vessels has her stern lights arranged one right under the other, on the flag-staff on the rear end of the boat; they show all around. They are usually placed from a foot and a half to two feet apart. I could not tell exactly how far off these

three lights were. They were pretty well down to the Esopus light. I could not tell whether they were above or right opposite the light because they were to the eastward.

Q. How far did those lights appear to be away from you at that time?

Objected to as irrelevant and immaterial and calling for the opinion of the witness on a point on which no opinion is admissible. Objection overruled. Defendant excepts.

A. Probably they looked to be a mile. Two vertical lights on the stern, white lights, one above the other, appear at that distance like one light. From my observation I took that high light that I saw to be the two lights of a tow-boat blended in one; when the lights got out range I looked through opera glasses. At night you can see better with such glasses than you can with the natural eyes.

Q. When the lights got out range what was your judgment of what these lights were on?

Same objection, ruling, and exception.

A. I took them, one to be ashore, the other on the yacht that lay off there to anchor.

Q. You mean by those two lights you took it to be the two low lights?

A. Yes, sir.

38 Q. What did it appear to you then that this high light was?

Same objection, ruling, and exception.

A. I could not tell what it was. When they got out range I took the night glasses; I looked at the light and all around to see if I could see anything. I could see nothing. I did not see any colored lights, either red or green, in the vicinity of this high light. This high light appeared to be to the westward of us. I could tell from the pilot-house she was off on the starboard. She was starboard of our flag-staff. That light did not appear to me at any time from the time I first observed it to be east of us.

Q. To go down around the Esopus light, if what you had first taken—if the lights had been what you first took them to be, a tow going down the river, what would have been the best course to take to have passed the tow?

Objected to as immaterial and irrelevant. Overruled. Defendant excepts.

A. To the eastward of them.

When I made up my mind that it was the tow I saw, I headed my boat more to the eastward. From that point I always kept my course to the eastward. It was a dark night, heavy clouds, and the wind was blowing very hard from the N. E. We did not have any rain on the way down.

Q. On such a night as that was, if there had been a green light

on the starboard side of what proved to be the yacht after you took your glasses up and looked to where you saw this high light was, if it had been a good bright green light, would you have been able to have seen it?

Objected to on the same grounds as to question put to a former witness. Objection overruled. Defendant excepts.

A. Yes, sir.

Q. I will assume a state of facts. If the yacht had been
39 headed up the river and on a course which would have taken her west of your steamboat would you have been able to have seen a green light if she had had one on board?

Same objection, ruling, and exception.

A. Yes, sir.

Q. Now, assuming that she was headed up the river and on a course which was west of the line of your steamboat, if she had had a good bright green light, ought not it to have been plainly visible to the naked eye the distance you were apart?

Same objection, ruling, and exception.

A. Yes, sir.

I did not at any time before the collision see a green light upon the yacht. Before the collision I saw a dim red light on the yacht. I heard one whistle from what proved to be this yacht. I answered them with one. I afterwards gave them two. It was not over three or four seconds between the time I answered his first whistle and the time I gave the two whistles. After I gave the two whistles I heard two whistles from the yacht; they were given just as quick as they could be given. There were no other whistles given than I have named, from either my boat or the yacht. First, the yacht blew one, and I blew one right after, then I blew two and the yacht blew two. I can't say for certain whether it was just before he blew the two whistles or right after he blew his two whistles that I saw the red light. It was one or the other.

(COURT:)

Q. What is the significance of one whistle?

A. To go to the right.

(COURT:)

Q. For each to go to the right?

A. Yes, sir.

Q. What was the significance of two whistles?

A. Each to go — the left.

Q. You say you saw this dim red light; you can't say with certainty whether it was just before or just after; could you indicate by anything to indicate the time?

A. No, sir; I could not. When I first got a glimpse of that
40 red light I did not see any other lights anywhere alongside that boat, only the white high light. I did not see the "bull's-

eye" lights. I saw them just before she struck us. After the yacht blowed his first whistle I answered him right away with one, and then after that there was nothing done; I did not alter the wheel or anything of the kind. I gave him two whistles; the boat was right on our course and he answered me with two; I hove my wheel hard starboard and sheered my boat hard-a-port. I kept the boat going to the port, kept her wheel hard-a-starboard, until I saw there was going to be a collision; I then rung four bells, to slow, stop, and back. I had a bell-pull—gong—down in the engine-room. I worked pretty quick; there was no time to be lost there. Immediately after I gave him the four bells the engineer stopped and reversed the engine. The wheel had made from three to four turns backward from the time I gave the bells until the collision took place. I think six or seven turns would have stopped it. I don't think it would have stopped her, but it would have stopped her headway. The three or four turns had materially stopped the headway of my boat. After the yacht had given the two whistles it looked to me as if her pilot hove his wheel the wrong way and went to the eastward, the same way I did. After the two whistles were given the yacht headed to the eastward. After I hove my wheel over the yacht came to the eastward faster than before—followed us right up. The bull's-eye lights showed to me from the yacht after she appeared to be sheering more to the eastward. The yacht struck us right on our starboard bow; she went right through us; came out on the port side. I think the point where she struck us was nearer to the bow than when she came through. Up to that time I could not say that the yacht had slackened her speed. She appeared to be running very fast; I think she was making from 15 to 16 miles an hour with the flood tide; probably more; I could not tell exactly; I know she
41 was running very fast. My boat went down after she ran through and cut the end off. The bow of the boat was cut entirely loose so it floated off. She went down head first—what was left of her. When I heard the first whistle the yacht appeared to be about 500 yards distant; might have been less. From the time the yacht gave the two whistles, I don't think we made three times our length before she struck us.

(COURT:) About how far, do you think?

A. I could not tell hardly.

Q. You are satisfied that your boat had not run three times her length?

A. Yes, sir; my boat was a little over 200 feet long; she struck us while we were backing.

Q. Your engineer did not stop backing at all until you hailed him?

A. No, sir; when the four bells were rung I could not tell how far apart we were. I knew they were not a great ways apart; how far I could not get. It may have been 200 or 100 feet; I can't tell anything about it.

Q. When was it that you first observed that the yacht appeared to be heading to the east of you, so that she had run across your bow?

A. I could not tell that; I could not answer that, hardly.

Q. In reference to the time that you heard these whistles—the two whistles—was it before or after the two whistles were given that she appeared to be headed across your bow?

A. After I gave her the two whistles.

(The COURT:)

Q. When the one whistle was given how did she appear headed?

A. I could not get much range only by the high light; I could not tell.

Q. But when you saw that high light when the one whistle was given, over which bow did you see the high light?

A. Over the starboard bow.

(COURT:)

Q. That is westerly of the channel?

A. Yes, sir.

Q. What reason did you have for changing from one whistle to two whistles?

Objected to. Objection overruled. Defendant excepts.

42 A. Because it was not safe for me to go across her bow to the westward of her.

(COURT:)

Q. Where was she when you gave the one whistle?

A. She was to the westward of me.

Q. Then you gave her two whistles because it was not safe to go to the west?

A. Yes, sir; at the time the one whistle was given I could not have thrown my boat to the westward and passed her without collision on the west side. That was the reason I gave the two so quick. When I gave the two whistles and he had answered them with two whistles, if he had ported his helm he would have cleared us. He could have passed us with safety on the west side without a collision.

Q. In running down the river that night from Rhinebeck to the time of the collision did you run or keep in about the same part of the channel of the river that steamboats usually run in going down the river?

Objected to as immaterial. Objection overruled. Defendant excepts.

A. Yes, sir.

Q. In coming up the river after you round the point, after you round Esopus light, on what land or point do you head?

Objected to by defendant's counsel on the ground that the question is irrelevant and immaterial; that the river is open for navigation and every vessel is at liberty to sail up the river with due regard to others.

Objection overruled. Defendant excepts.

Q. (Showing Ex. A.) Look at this map and tell us—here is a steamboat coming up; they come around Esopus light?

A. Yes, sir.

Q. In running up the river where do they head first?

A. I know where I head for; I head to the west of the Kingston light; that brings me off outside Port Ewen dock, west of the Swaney plat. After I get past that I head over towards Rhinebeck, going right on up the centre of the channel. In running up
43 the river, turning Esopus light no steamboat can run on one course so as to get past Rhinebeck and steer clear of the Swaney plat.

Cross-examination by Mr. WILSON:

A vessel coming up in the middle of the channel would not change her course until she got above Esopus light; she would take a kind of a circle. When she got ½ mile above the light she would steer a little to the westward of the Rondout light; that would bring her some distance clear of the bluffs on the right bank of the river below Rhinebeck. From opposite the Esopus light, looking to the Rondout light, you can't see by those bluffs right below Rhinebeck. If you look from opposite the Esopus light to the Rondout light, from the centre of the river, you can just see by Rhinebeck bluffs, seeing the bluffs a little to the right. I steered for the upper ice-house until we got pretty well towards it; then I gave way a little to the westward on account of a sailing vessel. I am not acquainted with the points of the compass; I don't trust myself when I can't see what I am steering after; when I get in that difficulty I give up to somebody who has more power than I have aboard the boat, who has full charge. At the time of the single whistle which the Yosemite gave and I answered I could not tell which way she was headed, but she was to the westward of me.

Q. You could not tell which way she was headed?

A. No; I could not tell anything about it.

Q. How could you tell what course would take you across her bows?

A. I was heading across her bows.

Q. You said you did not accept the single whistle or did not stick to the single-whistle agreement because that would have made it dangerous to you—carry you across the yacht's bows?

A. Yes, sir.

Q. How do you know it would carry you across her bows if you did not know what way she was headed?

A. Because I could not go to the westward of her.

44 Q. How do you know that would have taken you across her bows if you had gone to the right instead of the left?

A. If I had sheered and went to the right of her.

Q. Even though she had been headed to the east bank of the river?

A. I could not tell how she was headed.

Q. How could you tell how her bows were pointed?

A. I could not tell.

Q. How could you tell you were going across her bows if you did not know in what direction her bows were pointed?

A. I would not go across her bows.

Q. Suppose there had been no shores at all there, would you have been any better able to ascertain what direction she was pointing?

A. I knew she was on my starboard.

Q. Did you tell which way her bow was pointing?

A. I knew the whole boat was starboard of me; I could not tell which way she was headed.

Q. You know the rule of navigation that applies to that case as laid down by the U. S. Gov. authorities?

A. I know some of them.

I know the rule that applies to two vessels approaching each other as we were; if we don't understand each other we must stop the boat and back until we do understand.

Q. Were you aware of that rule at that time in regard to where one vessel has the other on the starboard hand?

A. No, sir; I was not aware of no rule.

Q. When does the vessel have the other on the starboard hand?

A. I don't know what you mean by it.

Q. Then the rule would not have done you much good if you had known it?

A. I can't get that through me.

I have been boating all the days of my life almost; I have read rules and regulations of steamboats, having printed diagrams and showing different positions; we did not have one aboard the ferry-boat; I have not read one in a long while.

Q. I read from your former testimony in this same case at folio 269: "The first thing I heard from what turned out to be this yacht was one whistle. I then blew one right away.

Q. Did you up to that time see any other lights on that vessel except that high light? A. Yes, sir; I saw a dim red light. I first discovered that dim red light just before he blew his whistle." Was that true?

A. I discovered either just before he blew the two whistles or after.

Q. On the former trial you testified it was just before the one whistle. Was that untrue?

A. I don't recollect anything about that.

Q. Was it untrue?

A. I don't recollect anything about that. There must be a mistake somewhere.

Q. What do you mean by a mistake?

A. I don't think that is right in there; I don't think I ever swore so; I don't think it was the fact. I don't think I ever swore to that at all, because I knew pretty near what I was doing and what I saw at the time. If I did so testify on the former trial it was not true. I can recollect just as good now as then; am pretty sure I never said that. I think there is a mistake there.

Q. I go on and read from your testimony: "A. It was just before or after that I discovered that dim red light."

Q. I am reading from your examination by Mr. Cantine on the former trial: "Q. You say 'just before.' Can you indicate to us anything by measure of time? A. Yes, sir; all the time there was to say to the lookout, 'There is a dim red light,' and I got one whistle." That was not true?

A. I don't think it is true. I don't think I ever said it.

Q. You think somebody has invented that and put it in this book?

A. Something wrong there; I will stick to that. I was not drunk or crazy or anything else.

46 I understood the one whistle to mean "go to the right." I answered it with one whistle. That meant that I agreed to go to the right, notwithstanding that I made no change in my direction—not a particle; never changed the wheel at all; never turned a spoke. When I blew the two whistles I hove her wheel hard over to the starboard and sheered the boat hard-a-port.

Q. Which came first, the two whistle- or heaving the wheel?

A. The whistles came first.

Q. Was it simultaneously?

A. I don't understand those high words.

Q. Was it at the same time that you threw the wheel hard-a-starboard?

A. Right after I got his two whistles.

Q. How far had you gone in the interval between giving your two whistles and hearing his?

A. We could not travel; there was only three or four seconds apart between the first two whistles; when I gave him two he answered me with two right away. Just as soon as I got his two whistles I hove my wheel hard-a-starboard and sheered the boat hard-a-port just as fast as she could go.

Q. How much time between the single whistles?

A. Not over three or four seconds, if there was that.

Q. When you threw your wheel hard-a-starboard what was the effect on the course of your boat?

A. Pretty well over to the east shore.

Q. Did she turn on her center or did she swing around carefully?

A. Naturally a little swing; she can't turn like a propeller; naturally have a swing.

Q. Take a length to turn her in?

A. Yes, sir.

Q. Twice her length?

A. I guess it would if she was going pretty fast.

Q. How did she get her ¼ of the way around?

A. Yes; she was over ¼ of the way around. I can place that pencil the way we were from the east shore (ind.).

47 From the course we were running when I threw the wheel hard-a-starboard she had changed her course eight points when we struck. The Yosemite struck us on our starboard

side; I think it was somewhere near the forward gangway. She came out on the other side, not exactly straight across. I could not tell exactly where she came out. I was looking out for myself then. I do not know anything of the compass course we were sailing at the moment I blew the two whistles.

Q. Give us your best judgment on it.

A. I could not do it; you have got me stuck there. I don't know what course it is through there.

Q. Imagine it for a moment at the S. E., then your change was sufficient to carry you from S. E. to N. E.—¼ of a circle?

A. It would not be exactly N. E., I don't think; it would be pretty well to the eastward.

Q. Would not ¼ of a circle bring her N. E.?

A. I don't know; I could not tell you. I can't answer it.

Q. Will you tell me how you got the nose of your boat across the bow of the Yosemite so that it was cut in two in the way you have described, unless you had come from a course where you were perfectly secure from being run into?

A. She followed me right up to the east shore, came right straight after me after I had my boat sheered.

Q. If your two boats ran together and both sheered to the east it would have brought you broadside to broadside?

A. No, sir; we were running exactly east.

Q. You say you changed at least ¼ of a circle?

A. I don't know about that; I could not tell you.

Q. You say this boat changed to the east also as fast as you did?

A. Yes, sir; she came faster.

Q. Then that would have turned her as much as you were turned?

A. No, sir.

Q. If she had turned to the east as fast as you turned, and faster, it would have thrown her as much out of her course as you were thrown out of your course?

A. I don't know whether it would or not.

48 Q. That is the best answer you can make?

A. Yes, sir. I did not hear the bells on the Yosemite.

Q. In your direct examination on the former trial you were asked this question, folio 275: "Q. Which way did the yacht appear to be headed from the time you got the first whistle until you got the two whistles in answer to your two? The yacht blew one whistle and you answered that one whistle, and then a moment afterwards, as soon as you could, you blew two whistles and she blew two in answer; now, from the time you got the first one whistle until you got the two whistles in answer to your two, what way was that yacht then apparently headed? A. I could not tell. All I had to go by was that red light. I had no range or white light to tell what course she was headed at all." Was that the fact?

A. From the first two whistles to the two last ones?

Q. Yes, sir.

A. No, sir; that is not correct, because I never saw that light until just before the two whistles were answered.

Q. Did you say, "All I had to go by was that red light"?

A. I don't know as I did; I can't say now.

Q. You don't say you did not?

A. I don't say I did or did not, because it is so long ago I don't remember. I could tell by the mast-head and red light what direction the yacht was headed; I should judge she had been headed to the east shore.

Q. I read from the testimony you gave on direct examination on the former trial, folio 284, "She hit my boat just forward of the foreward gangway; between the forward gangway and the window; she came out on the other side, at the forward gangway on the other side." Was not that correct?

A. On the port side.

Q. Was not that correct?

A. Yes, sir; I think it was. She struck us just forward of the forward gangway on the starboard side.

Q. Would not that cut the bow square off?

49 A. Yes, sir; it would cut it right square off. Edward Post was the lookout on the boat that night. At the time of the collision he was in the pilot-house. He had been in the pilot-house for some time. I could not tell just exactly how long, but I know a few minutes before that he had been out and said his lights were burning bright. He was helping steer, standing by the wheel in the pilot-house. I think he came in the pilot-house just below Port Ewen, and there we met that sailing vessel. He was in and out of the pilot-house every once in awhile, and when he was not in the pilot-house he was walking in front of the pilot-house. I know he stayed in there with me. I don't think he went out again. He helped me give that rank sheer when I hove her starboard. He was in the pilot-house when I saw those three white lights. He stayed in from that time out until the vessel was struck.

Q. I now read from your testimony, folio 324: "Q. At the time you gave those two whistles you were seeing at that time, as I understand you, this high light and the red light? A. Yes, sir. Q. How long before that had you seen those two lights? A. Just as I saw that dim red light I got a whistle. That's the first whistle." Was not that testimony true?

A. There is a mistake.

Q. Was not the testimony true?

A. No, sir. There is a mistake there somewhere. I don't think I ever said it.

Q. You can't imagine how the stenographer got it?

A. I don't know anything about it. I told the truth on my former examination, to the best of my recollection. My recollection is not as good to-day on some things as it was three years ago.

Q. You were asked on your former trial again, folio 336: "Q. I understand you to say you saw this red light just about the time you got the first whistle? A. Yes, sir." Was that incorrect?

A. I don't think I ever said that.

"—. Was Post in the pilot-house at the time? A. Yes. He had

hold of the wheel. He stood on the port side and I stood on
50 the starboard side, each having hold of the wheel. Q. Did you say anything to him or he to you at the time you saw this red light? A. Yes, sir; I spoke to him about it. Q. What did you say to him? A. I swore. I can tell you. I said, 'Jesus Christ, Ed., there's a red light.' That is all." Was not that testimony true?

A. Yes, sir; the swearing part is true.

Q. But you still persist that the other part is an error; that you first saw the red light about the time you got the first whistle?

A. Yes, sir. I don't think I ever said that. If I did say it, it was not true. At the time of the first whistle we may have been 500 yards distant apart; probably not have been so far. I could not tell exactly as to that.

Q. 500 yards is 1,500 feet?

A. Yes, sir.

Q. And your vessel was about 200 feet long?

A. Yes, sir; 205 or 206 or 207.

Q. And the Yosemite, you understand, was about 200 feet long?

A. 180 odd.

Q. Do you mean to say that in the distance of 1,500 feet these two vessels, of about 200 feet in length each, had not time to get to the right so as to pass each other to the right on the exchange of the single whistle?

A. I did not say so.

Q. In that distance you could not change the course of your vessel enough to avoid the vessel that was nearly head on to you?

A. She was not nearly head on to me. She was too far to the westward of me.

Q. You don't know whether she was headed?

A. No, sir. I have nothing to go by.

Q. She might have been headed on you?

A. Yes, sir; she might have headed off.

Q. The single whistle indicated, at least, she was headed on you?

A. Yes, sir. I think the lower ice-house corresponds with what is marked as "Knickerbocker wharf." The collision occurred hardly one-quarter of a mile below. I could not tell how far. I know it is just below the ice-house. When I first saw the high light it was
51 to the westward of Dinsmore's. I could not tell whether it was abreast of the light-house or below it. It was a little to the east of Esopus light. It could not *not* have been to the westward of the light-house. I kept my eye on this high light until the time of the two whistles. I picked up my glasses a number of times. I could not hear anything. I don't know whether it moved directly towards me. It was on my starboard all the time.

Redirect examination by Mr. CANTINE:

The time I was sworn as a witness on the first trial here was not the first time I had ever been sworn as a witness. This is the third time in my life I have been sworn.

My recollection is now clear that it was about the time of the two whistles being given and not before the first whistle that I saw the red light.

Q. Where was the lookout placed on your boat?

Objected to by defendant's counsel as immaterial and irrelevant. Objection overruled. Defendant excepts.

A. Right around the pilot-house on the upper deck, in front of it; on the hurricane deck of the pilot-house; if he saw anything to report it to me right away.

The windows were open in the pilot-house. The lookout occasionally came inside the pilot-house, running in and out every few minutes to look at the lights.

Q. In this place in the pilot-house could a man see right down in the river in front of him just as well as if he stood in front?

Objected to as incompetent. Objection overruled. Defendant excepts.

A. Yes, sir.

Q. On all these North River steamers that carry state-rooms that you have seen and having lookouts on, whereabouts on the steamboat was the lookout?

Objected to same as before. Objection overruled. Defendant excepts.

52 A. On deck forward of the pilot-house; that is his place, right around by the pilot-house; he can walk across decks there in front of the pilot-house.

Q. How did you get from the steamboat after the collision and where did you go after the collision?

Objected to as immaterial and irrelevant. Objection overruled. Defendant excepts.

A. I went on the yacht; they came for me with one of the yacht's life-boats. I wanted to have the lookout stay with me. He said he did not care much about it. Her stern was all out of the water when I finally left. The upper deck stuck out of the water maybe thirty or thirty-five feet. Of course her keel was not that much out. After I had got on the yacht they landed me at Catskill; came to anchor. I got in a small boat and passed ashore there. After I got on board the yacht I observed the red light and the white lights, but I did not see any green light. I was on deck; walked on both sides of the pilot-house—that is, in front of where the lights of a vessel are placed. I did not see any green light at all. The red light was not very bright, but dim. I do not recollect what time I got to Catskill or what time it was when the collision took place. I recollect that we met the Saratoga just below Catskill. The collision took place a little over a mile north of Esopus light. I can't tell exactly. When I gave the two whistles I could see the boats were approaching closer to each other. She was approaching from the west side. I could see her off the starboard bow of my steamboat.

It is admitted that the printed testimony is substantially correct. For any purpose of contradiction of this witness or any other witness the printed case can be read as if verified by the witness.

GEORGE H. POWER, sworn for plaintiff, testified:

I reside at Hudson. I am at present superintendent of the New York & Hudson Steamboat Co. I have been engaged in
53 steamboating since I was twenty-one years old. I am now seventy. I have run a steamboat as captain or pilot, more or less, pretty much all my life; different times, off and on. Since the law went into effect that captains and pilots had to be licensed I was licensed as captain, but not as pilot. I know what is meant by "central range light"—two white lights forward and aft. The one on the bow is placed in a box on the stern of the boat. It don't show aft at all, but it shows forward. The box has simply a round hole in front; it reflects off maybe a few points each way. The after light is generally in a box showing forward, hoisted on a flag-pole; it does not show aft. The object of the central range lights is that where two boats are coming toward each other they can form an idea what the course is. It is to indicate the direction that the boats are taking at the time.

By means of the colored lights and range lights you could determine the course of the vessel easier than you could if you had only the range lights or had only the colored lights.

I have never seen what is called a high foremast-head light in navigating the Hudson river at night. I have bought and sold steamboats, quite a number of them, running through a period of forty years. I knew the Charlotte Vanderbilt, should think, for twelve years. From my acquaintance and knowledge of her I am able to express an opinion as to somewhere near her market value. I should judge she was a boat worth from $20,000 to $25,000. I mean on July 14th, 1882.

Cross-examination by Mr. WILSON:

I do not know how old she was; sometimes that is an important factor in the value of the boat. I never saw the two after lights indicating a tow blend in one light, even at the distance of a mile. I don't think it would have that effect. If it did it would defeat the purpose.

54 Q. The purpose of the colored light is to indicate the course and direction of the vessel?

A. Yes, sir.

Q. How far around on the side did they show?

A. Well, I should think—give me a couple of books.

Q. Do you know in points?

A. (Witness showing with two law books.) Here is two vessels coming like that (heading in opposite direction); that green light would show very plain she was going to my right; seeing this green light here it would show this vessel was coming to my right.

Q. If you have a green light there (indicating at the starboard

side), a white light there (indicating at the mast-head), you would understand the vessel was headed to this side (indicating to the witness' right)?

A. Yes, sir; the pilot seeing this boat headed as it is now, his green light here (on the other vessel's right), red light there (on the other vessel's left), and white light there (indicating at the mast-head), he would see this boat was headed right on him.

Q. How would it be?

A. He should blow his whistle indicating which way he intended to go by the side of the vessel. In consequence of that in blowing his whistle this other vessel would haul to the eastward if he indicated he was going to the westward.

Q. Supposing the two vessels are in such position that the pilot of each can see only the red light on the other boat of the colored lights, what does that indicate?

A. Indicate they were both headed in that direction.

Q. Each vessel see the red light of the other?

A. They were going past one another.

Q. They must be in such position in no danger of collision?

A. Yes, sir.

Q. There is no danger of collision when you are both showing the same light?

A. There should never.

Q. If those on the Vanderbilt saw the red light of the
55 Yosemite and the Yosemite the other's red light, and neither saw the green light of the other boat, provided all lights were burning, they were in a position of perfect safety?

A. Yes, sir.

JOHN SLATTERY, sworn for plaintiff, testified as follows:

I am 24 years of age; I reside in Athens; I am a fireman on the steam-tug Pontiac. For the last three years I have run a stationary engine. I was sworn as a witness on the former trial of this case.

I have been boating off and on three or four years; on July 14th, 1882, I was on board of the Charlotte Vanderbilt when she had the collision with the yacht and was sunk; my business or employment on the boat that night was a porter.

Q. Where were you, say a little while before the collision, either standing or sitting on the boat?

A. I was aft of the starboard gangway, looking over the rail on the main deck.

Q. What was the first thing that attracted your attention as you were there?

A. I heard a boat blow a whistle and I heard our boat answer.

Q. How long a time was it from the time that whistle was blown from the other boat until your boat answered that whistle?

A. Immediately; then I heard our boat blow two whistles.

Q. How long was it after she had blowed the one whistle before she blew the two whistles?

A. About as soon as the pilot could pull the cord, I should judge.

Q. Was there a period of time between the one whistle and the time two were blown so that you would know they were not three consecutive whistles?

(Objected to as leading.)

State how long it was between the one and the two whistles.

A. I suppose, after he answered the boat with one whistle he blew two more.

Q. How soon after the first?

A. Right after he blew his one whistle; maybe three or four seconds; then I walked from the rail over to the engine-
56 room; I heard other whistles from another boat in answer.

Q. How long was it after the two whistles were blown from your boat before you heard an answer to those whistles?

A. Right away; from the sound they were apparently from the same vessel from which I had heard the first whistle.

Q. You said "right away;" can you indicate by time how quick that was or do you mean it was as quick as it could reasonably be done?

A. I suppose as quick as it could be done; after I heard the answer of the two whistles from the other boat I walked right across to the engine-room door.

Q. On your way to the engine-room or after you got there when was it that you heard bells, if you heard any?

A. Just as soon as I got there I heard bells to stop and back her—four bells.

Q. How many feet was it from the place where you were standing and heard the whistles given to the engine-room?

A. Maybe 20 feet.

Q. Had you walked at a usual gait in walking that 20 feet?

A. I don't know.

Q. How long was it from the time you heard these whistles until you heard these bells?

A. Three or four seconds.

Q. Did you notice if the engineer did anything when he got the bells?

A. Yes, sir; he "unhooked" and threw her in a back motion.

Q. Could you hear from the noise of the wheels she was reversed?

A. Not from the noise of the wheels; I could tell from his working her that she did.

Q. And did you notice how many turns he worked her back?

A. I don't know how many; the next thing I heard I heard somebody holler that the schooner had gone into her joiner-work; that noise was from somebody on the main deck; I heard a crash; I heard the crash before I heard that word; I could feel the concussion of the collision; the next thing I did I pulled my shoes
57 off and sailed for the hurricane deck; I pulled my shoes off, as I thought I would have to swim; the water came on the deck almost immediately; came down through the gangway; I went up-

stairs to the hurricane deck and I got from there on board of the Yosemite; I was taken by the yacht up to Catskill and landed there.

Cross-examination:

Q. You say you were standing or were in the aft starboard gangway—that is, the gangway that goes fore and aft—on the boat?

A. Yes, sir; I was looking over the rail into the water; looking towards the shore. I was out at the edge of the rail.

Q. Which way does the gangway you speak of run?

A. The same as that (indicating) rail runs along the jury-box.

Q. Side rail of the boat?

A. Yes, sir; I was leaning over it.

Q. Is that the gangway where they put the plank out to land at the bow?

A. It was the aft starboard gangway that goes across the boat.

Q. From there you couldn't see the engine-room?

A. Yes, sir; I could by turning around and looking I could see the engine-room door. There was nobody else there with me.

Q. Did you see anybody else aboard that part of the boat?

A. I might have seen somebody going into the wash-room; I don't think I did; I don't remember; I don't remember where the captain was.

Q. You say you heard this whistle and you heard your boat answer at once?

A. Yes, sir.

Q. Did you still stand there after you heard your boat answer?

A. Well, no; not exactly. I walked over towards the engine-room.

Q. Did you walk immediately to the engine-room?

A. I think I did.

Q. How far had you got toward the engine-room before you heard the two whistles from the boat?

A. Maybe half way.

58 Q. How far is the engine-room door forward of this gangway?

A. I said about twenty feet; I don't know exactly.

Q. About twenty feet from where you were standing, I understand you. Then I understand you that you heard these two whistles from your boat, and before you got to the engine-room door the bells came. Is that it?

A. Well, yes; I guess so. I think I had got to the doorway of the engine-room just as the bells came. I stood at the engine-room door till the crash came; stood right there.

Q. Do you remember whether the engineer had got any turns on the boat back before the crash came?

A. I couldn't say as to that. I didn't see anybody else in the engine-room but the engineer.

Q. You said that you heard somebody halloa that a schooner had run into you? Where was it?

A. Somebody on the main deck hollered that; I couldn't say who.

Q. Was there anything different in the blowing of these two whistles on the Vanderbilt from the way they were ordinarily blown?

A. No, sir; not that I know of; same as I heard all pilots blow.

(Mr. CANTINE:)

Q. You said when you stood at the engine-room door you saw the engineer "unhooking" the engine. Did you see him work with his bar?

A. Yes, sir.

EDWARD POST sworn for plaintiff.

By Mr. CANTINE:

My age is thirty-five; I am an ice-bargeman; I was on board the steamer Charlotte Vanderbilt on the night of July 14th, 1882, when she was sunk by a collision with the yacht Yosemite. I went aboard of her at Catskill first. My position on the boat that night was lookout. When we left Catskill it was about 7.10. When darkness came on I was on the upper deck by the pilot-house. My duty there was as lookout.

Q. Do you recollect about what place you were when you went into the pilot-house before the collision?

59 A. Between Point Ewen and Rondout. The windows were open in the front of the pilot-house.

Q. In fact, could you see as well from there with the windows down and open as you could if you had stood on the hurricane deck in front of the pilot-house?

A. Just as well.

Q. Can you state about how far down the river you had got when you first observed the light which ultimately proved to be the high light on the Yosemite?

A. From what place?

Q. Whereabouts in the river were you when you first saw that high light?

A. About abreast of the upper Esopus ice-house.

Q. What light did it appear to be to you when you first saw it?

A. I can't tell what light it was. I could not determine what light it was. I did not speak to the pilot about the light.

Q. Did he speak to you about it?

A. I don't know as he did at that time of seeing it first.

Q. Was there any time after you first saw the light he either spoke to you or you to him about it?

A. Yes, sir.

Q. When was that?

A. In a few minutes he spoke to me and he says, "I think there is a tow below." I made no answer to him; after this I observed a high light, but I couldn't tell what it was. I could not tell from where I was on the boat whether the light was on a vessel that was

in motion or stationary. The first whistle that I heard was one whistle from, I suppose, the floating vessel. I supposed it was from the vessel where the high light was; one whistle was returned by the Vanderbilt; it was given quickly.

Q. What were the next whistles you heard?

A. I heard none except our own; they were two whistles; I heard an answer back right away; they were two whistles.

Q. Had you up to that time that any whistles were given which were heard by you seen the red light on the yacht?

A. I saw the red light just before she struck us; that was after the whistles were given.

60 Q. Had you been noticing what turned out to be that vessel from the time you observed that high light?

A. I kept watch of the high light off and on. I could not really form an opinion of how far apart the vessels were when the first whistle was given from my vessel.

Q. Can you form an opinion now how far you were from that vessel when the two whistles were given by your vessel and answered back by them?

A. About 400 or 500 yards.

Q. Did you hear any bells given?

A. I did, from our boat; they were four bells, one right after another.

Q. When were they given with reference to the time when the two whistles were given and answered back?

A. Directly; right after, after the two whistles was answered to ours from the opposite boat.

Q. Was it so short a space of time that you could hardly specify minutes or seconds?

A. Second or two; it was almost immediately after. I could feel from the action of the boat and from what I could hear that the engineer answered the bells and reversed the boat.

Q. Could you form any opinion as to how many revolutions the wheel had made back?

A. Oh, from three to four turns.

Q. How near did the yacht get to you before you could see in the night that it was the form of a vessel?

A. Just before she struck us. The color of the yacht I supposed to be black. I saw her that night when I got aboard of her. I found out she was a black boat. After I saw this red light it was from two to three seconds before the collision took place; it was very quick. After I saw the red light it was about momentary; it seemed to be rather a dim light. The lights on my boat were brightly burning. The yacht struck my boat just forward of the gangway on the starboard side. She went out the middle of the gangway

61 on the port side. She entirely cut off the bow of my boat. The after part of my boat sank, and I don't know where the bow went. I suppose it drifted away. I went aft immediately after she ran through. I got way aft on the hurricane deck of my boat. I was aft on the hurricane deck, on the roof, from where I was taken aboard the Yosemite by what was supposed to be a life-boat.

Q. From the time you first observed the Yosemite, so you could see that it was a vessel approaching you, till the time she hit you, did she appear to have slackened her speed at all?

A. Not a bit. She appeared to be coming as fast as she was; she was coming very fast.

Q. Did you take notice whereabouts, with reference to the shore, it was that the collision took place?

A. A little below the lower ice-house at Esopus.

Q. Did your vessel sink so that for a day or two afterwards there was a little end of the stern of the vessel that was out of the water?

A. Yes, sir.

Q. And did you notice, with reference to the shore, where that was?

A. About—I would put it below the lower ice-house a couple of hundred feet. In my opinion, it is north of Esopus light, from a mile and a half to three-quarters.

Q. When you saw the yacht with the high light on it, what way did you see her over the bow of your boat, on the side?

A. Starboard side; there was no time that the high light was not west of the course of my boat.

Q. At the time you saw this high light, about on what point was your boat headed, with reference to down the river?

A. Headed to the eastward.

Q. Can you name any point on the shore?

A. From above Dinsmore's on the east shore. Dinsmore's is a little south and east of the Esopus light. Just this side of Dinsmore's and between that and the Esopus light the river makes an elbow to the west.

Q. In going down the river after you pass Rhinebeck, the
62 way that they steer the boats, in the usual course of the channel of the river, what point do they head for?

A. The upper ice-house at Esopus.

Q. How nearly to opposite that do you get before you change your course?

A. Very near abreast of it.

Q. Then about on what course do you change for?

A. Well, just below the lower ice house.

Q. How would that be with reference to and in range with Esopus light? Would it be west or east or in range with it?

A. It would be about in range of it.

Q. How far do you run before you can change your course?

A. Very little. I never took particular notice. That is not a long course. It is about abreast the lower ice-house.

Q. Then you take this course which you speak of at about Dinsmore's?

A. Yes, sir; I mean where Dinsmore's residence is, a little ways back from the shore. There is a light which I can see going down in the early part of the evening. I have followed the water 17 or 18 years, off and on, steamboating and slooping. I have been acting as lookout on steamboats three years, on different boats. The Vanderbilt and Walter Brett, each of those boats has three decks, one

called the hurricane deck on which the pilot is. So far as I have observed, the lookouts are stationed forward of the pilot-house on the hurricane deck.

Q. When the two whistles were received in answer from the yacht to the two whistles from the Vanderbuilt, what did the pilot do with your wheel?

A. Eased it hard-a-starboard. I assisted him to do that. That changed our course some to the eastward. The yacht appeared to change her course also some at the same time to the eastward.

Cross-examined by Mr. BENEDICT:

Q. I understood you to say you kept watch of this high light. Did you look to see whether there were any other lights?

A. Oh, I saw one or two other lights.

63 Q. What other lights did you see?

A. Light-house; I noticed a light over near Dinsmore's; no other.

Q. You understood, didn't you, as soon as you heard the one whistle that that light was on a vessel that was coming?

A. I thought it was; yes.

Q. Did you look to see whether there was any other light upon that vessel besides the high light at that time?

A. No, sir; not particularly; these ice-houses are on the west side of the river.

Q. How far do you say the vessels were (before the four bells were struck) apart?

A. 400 or 500 yards; that is as near as I can get at it. I don't know what part of a mile that is.

Q. Is there any difficulty in stopping the Vanderbilt dead-still in the water in a quarter of a mile?

A. I couldn't say as to that. I haven't had experience enough as an engineer to know. I have been on board of her.

Q. And you can't tell whether that boat could be stopped dead-still in the water in a quarter of a mile?

A. I never took particular notice; no, sir.

Q. Are you positive about that distance of 400 or 500 yards?

A. No, sir.

Q. If Mr. Whitaker had testified that they were not more than one hundred feet apart, do you think he is right or that you are right?

A. I couldn't say as to that.

Q. How much did the Vanderbilt change her course, do you know, under a starboard wheel?

A. Oh, some; quite some.

Q. Change so as to head pretty near on shore?

A. Not straight across, pretty near. I don't know enough about a compass to know how many points she changed. I never noticed on the Vanderbilt how many revolutions would stop her. I stayed at the wheel until the collision.

Q. Was there anything said between you and Mr. Whita-

64 ker after the bells were struck and before the collision?

A. Yes, sir; I believe so; something about a red light.

Q. After the bells were struck?

A. No, sir; not after the bells were struck; after the whistle was blown, I mean; after the bells were struck there was something said, "That's a yacht." That's all.

Q. How far do you say the Yosemite was away when you saw that red light first?

A. Oh, I said from 300 to 400 yards. I can't tell particularly; that's what I think.

Q. When you first saw that red light?

A. Oh, no; not when I first saw the red light.

Q. My question is, how far away was she when you first saw the red light?

A. I can't tell exactly.

Q. Give your judgment.

A. I can't tell at all, I tell you. I never measured it. I can't give an idea how far the Vanderbilt ran after I saw the red light; no idea at all.

Q. You don't know but what you ran 400 or 500 yards after you saw the red light?

A. I can't answer that question. I don't know.

Q. Can you tell whether you saw the red light before the two whistles were blown?

A. No, sir; I can't tell. I didn't see them.

Q. Then you can tell if you didn't see them before the two whistles were blown?

A. No, sir; I didn't.

Q. You said you were heading for the east shore just a little above Dinsmore's when you saw this light?

A. Yes; I believe I said so.

Q. Is that a course about straight down that reach of the river?

A. No, sir; it is not straight down.

Q. Isn't it about straight down that reach of the river above Esopus point?

A. No, sir; it is not straight down from Esopus point.

Q. (Presenting chart.) Is that your memory of the shape of the reach of the river?

A. Yes, sir.

65 Q. When you are running here you are heading there, I understand you. Isn't that about straight down the river?

A. I would be heading about on that point (indicating); I didn't take particular notice which way we was heading.

Q. You don't know whether you were heading straight down the river or east or west?

A. I noticed we were headed to the eastward.

Q. What do you mean by "headed to the eastward"? Do you mean across the river?

A. Slanting across the river.

Q. What time did you begin to make that movement across the river?

A. Right after we got the answer to the two whistles. We had

our course laid that way—to the eastward—before we heard any whistle.

Q. When you first saw the white light were you headed across the river or down the river?

A. Down the river, but a little to the eastward. We did not change our wheel from that time on until the two whistles were blown. I can't tell how far we run with the Vanderbilt in that time.

Q. Can you tell where you were—whether in the middle of the channel of the river or not?

A. No, sir; I didn't take particular notice what part of the river we were in.

The witness was further cross-examined by Mr. WILSON:

I saw the Esopus light, the high light of the Yosemite, and light near Dinsmore's. Those three were all the lights I saw until Mr. Whitaker called my attention to the red light. I did not see the red light before he called my attention to it. You could not see the red light until after she took the rank sheer.

Q. As far as you know, then, the pilot must have seen it first?

A. It appears he did from that. Two or three seconds elapsed between the interchange of single whistles and the interchange
66 of two whistles on each boat. The rank sheer was taken immediately after we got the two whistles. The wheel was thrown over on the Vanderbilt immediately after she got the answer from the opposite vessel. I did not hear any bells on the Yosemite; I heard the bells on my own vessel just as soon as the wheel went over.

Q. How far did the vessel travel after you gave the two whistles?

A. I could not tell you that.

Q. ¼ of a mile?

A. I could not tell you.

Q. Formed no notion at all?

A. No, sir.

Q. Have you any notion how far she changed her direction on the sheer?

A. I have not; no, sir.

Q. Whether she went half way around?

A. I could not say anything about that.

Redirect examination:

Q. I don't think I asked you this question—as to how long the time was between the time when the one whistle was given and that was answered and then afterwards two whistles were given?

A. Oh, right away. I went on board of the yacht after the collision and was taken to Catskill. I don't recollect about what time it was when I got back to Catskill; I didn't look at any time-piece.

Q. When you got on board of the yacht how many people did you see on the deck of the yacht other than those taken from the Vanderbilt?

A. I noticed three men in front of the pilot-house.

Q. Did you notice any others, except the men who had come to your relief with this life-boat, anywhere on the deck of the boat?

A. One about athwart of the pilot-house; athwartside of the pilot-house.

Q. Did he appear to be an officer?

A. I couldn't say; I didn't take particular notice; I stayed on deck all the way up to Catskill on board of the yacht.

Q. How many appeared to be on deck of the Yosemite having charge of her, as far as you observed, and constituting the crew of the Yosemite?

A. From four to five men.

67 Q. On going down the river, when you saw this high light, did you form any opinion at all of what sort of a vessel it was at any time from the time you first saw it until you got the first whistle?

A. No, sir.

Q. In running on the river have you ever seen north of New York, in the night-time, a vessel with such lights on as the Yosemite had?

(Objected to as immaterial, as irrelevant, and it is a question of what kind of lights they should have and not what this witness has observed. Overruled. Exception.)

A. No, sir.

Q. From the time you got aboard of the yacht until you got up to Catskill did she have any sails out?

A. I didn't notice any. If she had got any out I probably would have noticed them. I had been on the Vanderbilt before this as lookout about a month. I had never been lookout on any other steamer before that.

Q. So your experience as lookout is substantially since this collision?

A. I couldn't tell just exactly the time. During some of the time of the month I was there the Vanderbilt had been laid up. We had been laid up out of that month a week.

Q. So really you have been lookout for about three weeks?

A. Yes, as near as I can tell. I can't tell exactly, as I can't remember the days. During the three weeks I was there she had been running between Catskill and New York, going down one night and back the next.

PETER F. BELL, sworn for plaintiff, by Mr. CANTINE:

I reside at Evesport, Ulster Co., near the Green Co. line. I am 56 years of age. I have been boating all my life until the last two years; about forty-three years. I have been from a cook up to captain; I have been a pilot, a licensed pilot, and a licensed captain on a tug-boat; I have run with a steamboat on the Hudson river

68 from New York to New Baltimore; that is as far as we go now; I have been up to Albany with one boat that I was on; I was on the Hudson river on the night of the 14th of July,

when the Vanderbilt was sunk, on the tug-boat Prometheus; she was engaged that year in towing ice-barges; I recollect seeing the yacht that night; I met her between Livingston creek and Germantown; I was going down the river and she was going up.

Q. What did you first discover about that vessel when you first saw her?

A. I noticed one distinct high light.

Q. Could you form an opinion then as to what that light meant?

A. I couldn't tell what it was from where I was and where she was at the time.

Q. How near could you get to her before you could discover what it was?

A. Well, perhaps 500 or 600 yards; I will not say exactly the distance; somewhere near that. Then I saw a green light, very low.

Q. Will you describe as near as you can the character of the lights that you saw on this vessel that proved to be the yacht Yosemite?

A. As I was coming down the river—the night was very dark—I was between Livingston creek and the storehouse dock; I was hugging the east shore as near as I could to keep out of the tide, as I had a heavy tow; over the top of the storehouse this light first attracted my attention, and I said to the man, "I can't tell what it is; I don't see anything but the light." In a few minutes after that she came out past the storehouse; the first thing that I saw was some "bull's-eye" lights along her starboard side near the bow, which I supposed were between decks, and the next thing I saw was a dim green light, when she got within about 500 or 600 yards; that is all the lights I saw on the boat.

Q. How far were you away from the vessel when you saw this dim green light?

A. Not over three lengths of the steamboat, or perhaps more; the steamboat was 136 feet long. If this green light had been a
69 good bright light I would have been able to see it as soon as the other light came over past the storehouse, which was about half a mile distant. I saw the white light quite aways below over the top of the storehouse; when she came out past the storehouse then I could see the other light. This high light was apparently 30 or 35 feet above the water; maybe more. It was right under the cross-trees. The light was just about as high above the water as the length of the yacht's foremast.

Q. In your experience in boating on the river have you ever seen such a light as that light was at the top of the foremast?

Objected to on the same grounds as to a similar question. Objection overruled. Defendant excepts.

A. No, sir; I say no, sir; I have seen one vessel that was towing a raft come up as far as the mouth of the Harlem river with a light like that.

Cross-examination by Mr. WILSON:

Q. You testified on the former trial in answer to a question of Mr. Cantine's in regard to this green light: "Did it appear to be a bright light? A. Middling; not very. I could not then see the outline of the vessel." Was that correct?

A. That was correct.

Q. By middling you don't mean extremely dim?

A. Not exactly a dark light.

Q. Middling bright what you said?

A. About a medium light, between a bright light and a dull light. I passed this yacht about six miles below Catskill point. The storehouse obstructed my view of the yacht part of the time, but the white light was high enough to show over the storehouse. I did not see the green light until she got quite away out from the storehouse. Those "bull's-eye" lights were bright white lights. The weather had been stormy; very heavy showers above the river; I don't know as it had rained any below Athens; it was
70 dark and kind of misty night; hardly a rain; between a rain and a very heavy mist like. There had been very heavy thunder and lightning that night up the river. As soon as I saw this green light I knew it was on some vessel. I said to my man, "That is a yacht." I had no difficulty in knowing which way she was going at that time; she was far enough to the west of me. I did not see any red light at all. In the position I was in I could not see the red light.

(COURT:)

Q. That is the object of the light, to see the green light and the red. If you see the green light you know she is on your starboard and your red light on your port?

A. Yes, sir; if a man can see but one light of a steamboat coming up the river, to him one colored light, that is enough indication that he is able to clear her.

Q. You were coming down on the east side that night?

A. I was coming down the east shore; the yacht was to the westward of me, about one-third of the way from the east shore towards the middle of the channel. I was close along the bank as I could get to get out of the tide.

Redirect examination by Mr. CANTINE:

I was not able that night to determine whether this vessel was a yacht or not until I saw her "bull's-eye" lights. She appeared to be running up the river pretty lively at that time.

JAMES H. DADY affirmed for the plaintiff and testified:

Q. What is your age?

A. 39; my business is engineer and has been about 10 years; have been an engineer on a steamboat; since I got my papers first, it is about 10 years.

Q. When did you cease to be an engineer on steamboats?

A. I think it is five years ago I gave it up for two years, and then I went back boating again; about a year and a half I gave it up, and a year ago last fall I gave it up altogether. Since that
71 time I have been engaged in running a stationary engine at Seymour, Conn.; I am engaged there now at work, and came from there here to attend this trial.

Q. You speak of getting your papers as engineer; do you mean got your license as engineer?

A. Yes, sir; I got them first in New York, and then I got them renewed in Albany; as long as I was steamboating I continued to get them renewed at Albany; I was on board the Charlotte Vanderbilt on the night of July 14th, 1882, when she was sunk by the collision with the yacht; I was the engineer in charge of the boat that night; I was what was called first engineer and licensed as such and had a license then; I don't recollect the time I left Catskill that night; in going from Catskill down I recollect receiving bells before the collision.

Q. Will you tell this jury what bells you got before the collision?

A. I got four bells right together; on my boat getting four bells, meant to stop and back; it means when you get them right together to do it as quick as you can; the call for those bells came, I supposed, from the pilot-house; that is where the wire runs from.

Q. When you got those bells what did you do?

A. I "unhooked" the engine and gave it about three turns back, and then I got the shock and the water came into the engine-room and I had to leave the engine-room; it was a pretty good shock.

Q. How long after the shock before the water came into the engine-room?

A. Not very long; I couldn't exactly state the time; it was pretty quick.

Q. Have you an impression how long it would take you to make three to four turns of the engine?

A. It wouldn't take very long; with a pretty good head of steam it wouldn't take very long.

Q. Do you recollect about what head of steam you had on in running from Catskill down?

A. I couldn't tell exactly, but from my recollection, I think,
72 from 28 to 32; sometimes we got a little higher than that; I couldn't exactly tell; that would give a rate of speed to my boat with ebb tide of probably 10 miles.

Q. If you were going against the tide, how much would it be?

A. About 10 miles with the tide and about 9 miles against the tide. I never noticed it much.

Q. Were you in your engine-room when you got these bells?

A. I was sitting right at the door. I could reach the bar with my hand. When I got this I was as quick as I could; I knew there was "something up" when I got the four bells. It was a dark night and I calculated there was something wrong somewhere. I acted as quick as I could. When I found the water coming in I took off my boots. I thought I would have to swim for my life, and I

wasn't going to swim a mile or two with a pair of heavy boots on if I knew myself. After I got my boots off I went upstairs into the state-room hall. I went pretty quick.

Q. To get there did you have to run through any water?

A. It was raising all the while.

Q. How high up on your legs did the water come?

A. Up above my ankles; up about there (indicating).

Q. Where did you go from the rear end of the boat?

A. I went on the hurricane deck and I stopped there until I found the boat was settling and I saw the life-boat from the yacht coming to us and I saw the water wasn't raising any higher and I went down on the saloon deck again. Then I got into the life-boat and I was taken from there to the yacht. I was taken on board, and so on to Catskill.

Q. How far did the yacht appear to be from you when you got up on the hurricane deck?

A. Well, she was quite a little ways. I just saw a light. I couldn't say exactly how far away.

Q. When you got on board the yacht did you notice what lights she had on?

A. No, sir; only the mast-head light that was up above
73 the mast-head. There may have been other lights there, but I didn't notice. I was kind of cold and I was looking for some place to get warm. I didn't have any clothes on except a pair of overalls and shirt. I was looking for a place to get warm downstairs at the engine.

Q. When you got on the deck of the yacht how many people did you see there of those who belonged to the yacht besides the men who had come with the life-boat with you?

A. I think it was three or four men I saw on deck, and I think a couple of ladies. When I went into the engine-room I saw the engineer and oiler; I couldn't say whether there were two oilers there or not, but there was one and an engineer. I didn't notice what time I got to Catskill that night. When I got to Catskill I went off the yacht and got ashore.

Cross-examined by Mr. BENEDICT:

Q. You heard a whistle from the Vanderbilt?

A. Yes, sir; I thought it was the Vanderbilt's whistle. I afterwards heard her blow two whistles. I was asked about that before the steamboat inspectors.

Q. You said that these two whistles came about three or four minutes after the first one?

A. Yes; I made a mistake in that when I made that statement.

Q. How did you come to make a mistake?

A. I wasn't thinking about the thing at the time.

Q Weren't they asking you about it?

A. Yes, but it kind of slipped my mind. I meant to have it three or four seconds instead of minutes.

Q. How was it about the time between the whistles and bells to stop and back?

A. As soon as the whistle blowed the bells were rung immediately afterwards. I didn't make any mistake about that when my testimony was taken before the inspectors. My attention was called to that. I thought of that more closely than I did of the other.

Q. Why?

74 A. The inspectors asked me was I sure the bells were rung, and I said yes, immediately after the whistle.

Q. How long would it take to stop the Vanderbilt?

A. To stop her right still at flood tide it would take, I should think, about seven or eight turns.

Q. How many turns a minute did she make going down the river?

A. I couldn't say; I should think about 15 or 16 turns; somewhere around there; it may be more or less; I never timed her. I don't know how many turns she made. I was engineer of her, I guess, about three weeks.

End of cross read as redirect.

Q. Who went in the boat with you to the yacht?

A. I think Capt. Wolf and his wife and daughter and mate and a couple of deck hands, I think, to the best of my ability.

Q. Were there any other persons on board of the Vanderbilt?

A. Yes; the pilot and the lookout.

Q. Is that all?

A. There was a waiter and chambermaid and, I guess, a porter. I don't think they all went on the one boat; I think the boat came back the second time. The chambermaid was a colored woman. I don't think the porter was colored. There was a colored man on board; he was a waiter.

Q. Did they go in the boat with you?

A. Now, that I couldn't say exactly, but I think they did; I wouldn't be sure.

Q. Had your attention been called to the fact that you had made a mistake in your testimony before the steamboat inspectors—had your attention been called to it before you stated it to me?

A. No, sir. When I was leaving Catskill and going out to Seymour, Conn., when I was going down on the train, there was an engineer from Catskill going down, and he called my attention to it, and he said three minutes was quite a little while, and I said, Yes; I made a mistake. I never thought of this lawsuit or any-

75 thing coming off until last Friday, when I got a subpœna out in Connecticut, and that brought it back to my mind.

Q. When was it the engineer said that to you?

A. A year ago last New Year's; I don't know that engineer's name; he told me he was an engineer; I never knew him before; I have never seen him since; I couldn't say how he come to know I had been engineer on the Vanderbilt; he was a stranger to me; I told him I was engineer on the Vanderbilt.

Q. How did you come to tell him that?

A. When going by Cold Spring there was a man sat ahead of me in the seat and the steamboat's wheel laid on the Cold Spring dock,

and one of the men said, "There is some steamboat's shaft," and I told him I thought it was the Vanderbilt's, and he asked me about it, and he said he was an engineer, and I was telling him about the case and how it was.

Q. Did he say he was there when you were examined?

A. No, sir; he did not say he had heard or read my testimony.

Q. Did he ask you what you said before the inspectors?

A. Yes, sir; he was asking me and I merely told him; I told him that I said three minutes, I thought; he said that was quite a length of time; I told him that I said at that time that it was three minutes; he said that was a good while; then it occurred to me that I had made it too long, that I made a mistake.

Q. Have you talked with anybody else about that matter since that time?

A. I spoke of it to Mr. Chase night before last at the hotel; that's all I said.

CHARLES SWIFT sworn for plaintiff and testified:

Examined by Mr. CANTINE:

I reside at Kingston; I am 30 years old; just at present I
76 have no business; I have just left the river; I have been boating last; I gave up boating a week last Friday; I was then on the Catskill; she runs from Rondout to New York; she is running in Cornell's line; I have been boating outside and in the river here since I was 12 years old, but not all the time; if aggregated all together I should say it would make in the neighborhood of eleven years; I have been "before the mast" on schooners and mate of schooners and deck hand on steamboats on the Hudson river and mate of steamboats on the Hudson river; no higher than that. The duty of a mate on a steamboat is to look after the main deck in general; to see the stowing of the freight and unloading it. That is more his duty than anything else. He has charge of the deck hands and the working of the lines at the dock and overseeing all such things.

Q. How long have you been engaged on steamboats in this number of years?

A. The first of my steamboat experience on the Hudson river or, in fact, any river, I can't tell you the date exactly, but it was about three weeks before this accident occurred. Since that time I have been steamboating on the Hudson river; last year most of the year and part of the spring. Previous to that I had been along the coast; I hadn't been on the Hudson river; I had been on coasting sail vessels. On the night the Vanderbilt was sunk I was on the Charlotte Vanderbilt; I was mate upon that night upon that boat; I got aboard of her at Athens.

Q. Do you recollect about what time that was?

A. I had been there some week or so before; she was launched at Athens that day; I was aboard of her when she was launched; she was towed to Catskill from Athens by the tug "Ambition;" when I got to Catskill with the boat she laid at Catskill point and coaled up;

I recollect what time she started for New York; I should say it was in the neighborhood of seven o'clock.

Q. What did you do aboard the boat after you started to come down?

77 A. As soon as we left the dock I had the lines coiled up and the decks cleared up, and then I went to washing the decks down. There was nobody but the crew on board that night, but the captain's wife and daughter.

Q. Were they guests of the captain or paid passengers?

A. I supposed, of course (I didn't know about that part of it, it was none of my business), they were guests of the captain. The wind, I should say, was from the northeast; it was a terrible bad night; there was a heavy thunder shower following us. I should say the thunder shower was directly north of us and seemed to be following us down. It kept just about so far away from us; it didn't overtake us. The sky was not as black and dark ahead of us as behind us.

Q. Ahead of you there were some floating clouds, or was the sky entirely clear?

A. No, sir; I don't think it was entirely clear; I think there was some floating clouds, but once in awhile you could see the clear sky; it was a very dark night.

Q. After you got done scrubbing the decks down what did you do?

A. Started for the wash-room to wash up. I got rather dirty coaling up and I felt as though I would like to get some of the coal dust off of me before I turned in. The wash-room was exactly opposite the engine-room, on the starboard side. The engine-room was level with the main deck; there is a gangway running on the main deck on each side of the engine-room.

Q. On the starboard side of the gangway was the wash-room?

A. The wash-room was on the "quarter," on the outside of the hull of the boat; it was on the guard; it was also across the gangway. While there I heard something before the collision. First I heard was one whistle by some strange boat.. I never had heard it before; it was a very hoarse, loud whistle; it didn't sound very loud to me, but I want you to understand that it was a loud, hoarse whistle at a distance, and we gave it an answer by one whistle, and the next was two whistles blown by us.

78 Q. How long was that after you had heard the one whistle from that boat until you heard the two whistles from your boat?

A. I couldn't say positively; just a little bit of a pause between the two; just enough to designate the one whistle didn't belong with the two; that's the way I took it. Of course, I knew the whistles and understood what they meant. I heard whistles in answer to those two. I heard, in answer to those two, two whistles from some other boat.

Q. Was it apparently the same sounding whistle as the one you first heard?

A. Yes, sir; it sounded very much like it, only somewhat nearer. The next thing I heard was four bells in the engine-room. Then I

many persons of the crew of the yacht were on deck besides those in the life-boat that took you over?

A. I don't recollect the number; I know they were very few. There were two gentlemen, I remember, standing there near the gangway as we went there, and I think there was one or two ladies.

I am not positive about that. Either I saw them about that
80 time or I saw them afterwards on that boat; I don't know which. I noticed when I got up to Catskill what time it was. It was in Billy Hahn's hotel, there on the point. I think it is the Continental hotel. That was after the yacht had anchored at the shore there. It was just five minutes of twelve.

Q. In your opinion, how long before you looked at this clock had it been when she stopped at Catskill to cast her anchor?

A. I think it must be in the neighborhood of ten minutes. We came directly from the yacht to the dock and came to the hotel, and it took two or three minutes to wake them up.

Q. From the time you left Catskill to go down the river on the Vanderbilt had you noticed what time it was?

A. No, sir; I have no idea at all. It appears to me that I heard somebody give the time at about the time we went aboard of the yacht, but I will not swear to that.

Q. You spoke about a shower following you down the river. Do you recollect whether the shower had passed you?

A. Passed down the river, I believe. I think it was clear after we started up.

Cross-examined by Mr. BENEDICT:

I was examined before the steamboat inspectors. My memory of the matter was as fresh then as it is now; probably a little better. I don't know but what it was. I meant to tell the thing just as it was, as near as I knew how.

Q. Do you remember testifying at that time that you "heard one whistle blown by some other steamer and answered by us, and then I was surprised about a minute after to hear two whistles by us"?

A. Yes, sir; I remember testifying to that; that was my memory of it at that time. I had been mate of the Vanderbilt about a week. She had been laying up at that time.

Q. That was your first trip down here on the river?

A. It was my first trip as mate, but not my first trip on
81 her. I had been on her before all the time she had been running before she laid up. That was something in the neighborhood of two weeks; I don't know but three. I had been on her during that time as deck hand.

Q. You said you had never noticed such a light as this mast-head light between New York and Catskill. What was the difference between this light and other lights?

A. The height of it; that is the only thing I could see. I was in the wash-room when the whistles were blown. I did not come out of the wash-room before the bells were rung. I didn't come out till the bells were rung. When the whistles were blown I was washing.

I think I didn't finish my washing. From where I was in the wash-room I could see the engine-room; the wash-room was across the gangway.

Q. Where was the engineer?

A. The engine-room was right in the centre of the boat. I don't know which side of the engine-room he was. I think he was sitting on the port side of the engine—that is, the opposite side from where I was. There was a little bench there to sit on and I think he was sitting upon it.

Q. Did you see how many turns of the engine were made backwards?

A. No, sir; I didn't. I am not able to tell you positively.

Q. Where were you when the vessel struck?

A. Standing at the corner of the captain's office on the starboard side in the gangway.

Q. How far is that from the wash-room?

A. In the neighborhood of three or four steps, perhaps.

Q. Had you done anything between the time except to come out of the wash-room and go those three or four steps?

A. That's all.

Redirect examination by Mr. CANTINE:

Q. When you said the only difference in the light was that it was a high light, had you ever seen a tow on the Hudson river before this with a high light and without any light at the bow?

82 (Objected to as before and also because this witness swears he had not been in the habit of going on the Hudson river, and therefore it is immaterial. Overruled. Defendant excepts.)

A. No, sir; I never have. The door of the wash-room was open and the engine-room door was open.

Q. How wide was that gangway between the wash-room and the engine-room?

A. I should think in the neighborhood of 10 feet; perhaps a little more or a little less.

THEODORE VAN SICKLE, sworn for the plaintiff, testified:

Examined by Mr. CANTINE:

My age is forty; my present employment is on a boat.

Q. On what boat?

A. On none this year. I calculated to go on a boat. I have been actually engaged in boating twelve years off and on as lookout and wheelsman. I was on the steamboat Saratoga on the night of July 14th, 1882.

Q. Do you remember when you got down in the neighborhood of Catskill of seeing any object in front of you or south of you in the river; and, if so, what?

A. Yes; we saw this high light. We couldn't tell what it was. When we got down abreast of it we saw it was a yacht.

Q. What time of night was it?

A. Between 11 and 12 oclock. It must have been pretty close to 12 o'clock, I think. My steamboat usually passes Catskill going down about that time.

Q. Did you form any impression or opinion as to what sort of a craft it was?

A. We had an idea it was a little tug going down with a stern light. The lights were pretty high. That's all we could tell, you know. I saw colored lights on board the boat—green—little dim green light.

Q. How far off from the boat were you when you saw the little dim green light you speak of?

83 A. Below Catskill dock. I says to Fred., "Fred., there's a little green light;" and just as I spoke they blowed. Fred. had his hand on the "pull" to pull, but before he pulled this yacht blew one whistle and Fred. answered him, and he went down on the west side.

Q. How far apart were they at that time?

A. Below the dock.

Q. How far off from the yacht were you?

A. Not far; between the dock and Oak Hill; Oak Hill isn't very far from the dock; we must have been abreast of the creek; I don't think it was quite half a mile.

Q. At that time was that green light, in your opinion, visible as far as two miles on a dark night with a clear atmosphere; could you have seen that green light that you observed there, in a dark night, with a clear atmosphere, as far as two miles?

A. I don't think you could; no, sir; it was a very dim light.

Q. Were you in the pilot-house?

A. No, sir; I was outside of it; I was acting as lookout.

Q. How long had you been a lookout upon that vessel or either one of the Troy line steamers running to New York?

A. The year before I went there, about the first of September, and the next spring I went aboard and stayed the season out.

Q. Before that had you been lookout on other steamers?

A. I was in the St. John's pilot-house eight or nine seasons as wheelsman; I went lookout on her a little while; that is one of the People's line of steamboats running from Albany to New York; she is one of the largest steamboats running on the Hudson river.

Q. Whereabouts on these river steamers that are constructed with a main deck and then a state-room hall deck, and then a deck extending forward, but not as far forward as the bow, and then a hurricane deck on top of that, is it the custom to place the pilot?

A. On the St. John on the main deck, which is below the pilot-house; our pilot-house comes right even with the promenade

84 deck, so you couldn't stand there very well, but on the other deck he can below here; on the St. John the pilot-house stands on the hurricane deck, right at the front of it.

Q. And so close to the front that a man couldn't stand there and walk about in front?

A. I don't think he could; below that is the promenade deck;

that is even with the state-room hall; on that deck right below the pilot-house the lookout is put on the St. John.

Q. When you are there on the promenade deck on the St. John, how far would you be in the rear of the bow of the boat?

A. I don't know how far; quite a ways, though; it must be 50 or 60 feet.

Q. On the other steamboats that carry state-rooms, where usually is the lookout placed with reference to the pilot-house?

A. Right close to the pilot-house; if it is wide enough for him to stand in front of the pilot-house that is sufficient; if there is room on the deck so a lookout could stand and walk about that is the place he is put; that is considerable distance in the rear of the bow of the boat.

Q. From the bow of the boat where they have these three decks on a steamboat, if the lookout was way at the bow, would it be difficult for him to call out the objects that he saw in front of him so the pilot could understand?

A. He couldn't do it if he was way forward; I have tried it myself.

Q. This light that you saw on the yacht that night, was that a usual and customary light on the Hudson river between New York and Albany?

A. I never saw it carried so high as that on a boat.

Q. Was there anything besides its being so high; was there any bow light upon it?

A. No, sir.

Q. Is it the usual and customary light for a steamboat running on the Hudson river north of New York to run with one high bright light and without a bow light?

Objection and exception.

85 A. No, sir; they are supposed to have their light on the stem; they have a light on the stem and a light aft the flagstaff, and that makes what is known as the "central range light;" I had never before this time seen such a light as this on the Hudson river on a vessel without having a bow light on.

Cross-examined by Mr. F. L. WESTBROOK:

I ran on the Saratoga. I was lookout. I was looking for vessels.

Q. What did you do on the Saratoga?

A. I told you I was lookout. I was hired there for the purpose of looking out for vessels. I am a lookout and I was at that time. I haven't been lookout so very long; two or three seasons altogether; before that I was wheelsman.

Q. What time does the Saratoga get to New York?

A. Well, if we don't have any serious pullbacks we get there about 7 or 7.–0; we run down to the foot of Christopher street; that is just above Canal street. I am in discharge of my duties as lookout until I land there.

Q. You see a good many ocean-going vessels there?

A. Not up the North river. I have below New York.

Q. Was I talking about the North river?

A. I have seen vessels up that way towards Yonkers, but not after dark that I know of. I have seen them in the waters opposite New York.

Q. New York city runs up to Yonkers, doesn't it?

A. No, sir; but it ought to; Yonkers and New York city are adjoining each other.

Q. Don't you see a great many ocean-going steamers?

A. Yes; I have seen a good many, not between Yonkers and Christopher street; some of them land above there—foreign vessels.

Q. For a long distance above Christopher street?

A. Quite a piece above.

Q. As far up as Central park?

A. I have seen them up as far as the Vanderbilt elevator.

86 Q. All the way up from the Battery up as far as Sixty-fifth street are there not slips into which these ocean-going steamers run?

A. Some places they don't land; they go as high up as the elevator.

Q. They have their slips there?

A. There's a good many piers they don't.

Q. Don't they go out at all times of the day and night according to the tide?

A. Yes; go down the river. I guess they don't go out to come up.

Q. I ask you if these ocean-going vessels which have their piers at intervals from about Seventieth street to the Battery do not go out at all parts of the twenty-four hours.

A. Yes, sir; according to the state of the tide, I guess.

Q. Sixty-fifth street and all the piers from there to the Battery are along the Hudson river or on the Hudson river?

A. Piers for ships?

Q. Yes; or steamboats, either.

A. Yes, sir.

Q. Haven't you seen these ocean steamers going out during the night?

A. No, sir; I have never seen them, but they say they do go out; they go out according to the tide in order to get over the "bar." I believe that is the calculation.

Q. Then you don't know what sort of lights they carry in going out?

A. I never took any notice. I suppose side lights.

Q. You said something about coming in. Do you know anything about *there* coming in?

A. I know they come in.

Q. Do you know anything about it?

A. I guess they don't calculate to come in at night. I don't know anything about the quarantine regulations. I don't know anything about it as far as that goes.

By Mr. CANTINE:

Q. These ocean-going steamers when they leave New York to go to sea or come to New York from the sea, at night, you, of your own knowledge, know nothing about it because you never saw them do it?

A. No, sir; but I have heard say they did.

87 HENRY O. NICHOLS sworn for plaintiff and testified:

Examined by Mr. CANTINE:

I reside at Athens, N. Y.; my business now is merchant. I have been engaged in the steamboat business, more or less, for twenty-seven years; in the aggregate, probably sixteen to eighteen. I have been a licensed master of a steamboat for twelve or fourteen years. I ceased to act as master of a steamboat about four years ago. I ran on the waters of the Hudson river. I had a pilot's license; I was a licensed pilot on the Hudson river six or eight years. The last I had a pilot's license was when my captain's license expired four years ago. For six or eight years I carried a captain's and pilot's license both. In steamboating and carrying a captain's and pilot's license I became familiar with the navigation of the Hudson river; my boating was all on the Hudson river.

Q. In your navigation of the Hudson river between New York and points north, how far, about, north was it that you ran?

A. I ran from Troy to New York a good portion of the time; not all the while, of course.

Q. In your navigation of the Hudson river did you meet with steam vessels having on them a high light at the mast-head with no bright light at the bow and with green or red lights at the sides?

A. I don't remember of meeting any vessel in my working days of that description.

Q. From your experience as a boatman on the Hudson river, would a steam vessel with a mast-head light (white light) and with no bow light be a usual or a customary light for a steam vessel to navigate the Hudson river?

(Same objection as before. Overruled. Defendant excepts.)

A. It would not.

Q. Are you acquainted with the value of steamboats?

88 A. Yes; I suppose so. I have bought and sold them. I knew the steamboat Charlotte Vanderbilt.

Q. How many years before she was lost did you know her?

A. I knew her from 1877 till she was lost; in fact, I knew her before that (1877), but not very intimately. I had owned or been interested in a steamboat. I was one of the stock company who bought her. I had something to do with buying her; that was in the fall of 1877, I believe. At that time I examined her. After we bought her we put her upon the dry-dock and put in some new timbers and partly some new planking, and put a double tier of state-rooms upon her and gave her a thorough overhauling. I ceased to

be interested as a stockholder in the company that owned her in the winter of 1879 or 1880. I am not positive as to that either; either 1879 or 1880.

Q. Subsequent to that period of time did you know if anything had been done to improve the boat?

A. After I sold my interest in the boat I believe the company put in a new boiler and done some other work in her; I don't remember what.

Q. In July, 1882, at the time she was lost, what, in your opinion, was the market value of that steamboat?

A. Well, sir, I should think in the neighborhood of $25,000.

Cross-examination by Mr. BENEDICT:

I was one of the stock company that bought this boat. It was a stock company formed for the purpose of running boats on the river. The company owned other boats besides this one—the Escort; no other at that time; the comparative value was about the same.

Q. Did you have any charge of the work that was done on the boat after she was bought by this company?

A. Yes, sir; I had full charge of her until after I sold out and they put in the new boiler, and then I had nothing to do with her.

89 The name of the company was the New York, Catskill & Athens Steamboat Co. The boat was bought from the Potomac Steamboat Co., I believe.

Q. Do you know how old she was?

A. No, sir; I can't call to mind. I don't remember exactly. The question of the age of a boat is a pretty important element of value. If I had the certificate here I could tell. I can't call to mind how old she was.

Q. You say you ceased to be a stockholder in 1879?

A. I think so; 1879 or 1880; winter of 1879 or spring of 1880, I think, although I had nothing to do with her. After that I saw her on the river as she ran up and down. I think there was a new boiler put on. I was told so at the time. I didn't see the boiler put in there. It was the main boiler. She had only one main boiler. This was the replacing of the main boiler. I think Magee & Van Loan put that in. I am not certain of it. I have been interested in another boat beside that. I was a stockholder in the Citizens' Line of Troy at one time. I think that was in 1874 or 1875; also in other boats.

Q. Were you familiar with and had you personal knowledge of the sale of any steamboat in July, 1882?

A. No, sir; I don't know that I had, or about that time, or the purchase of any.

Q. How did you arrive at this valuation of $25,000?

A. From what we paid for her in the first place when I bought her in connection with the company and the repairs we put upon her and then the putting in of this boiler. I offered the company myself——

Q. (Interrupting.) You added up those three sums, as I understand you?

A. Yes, sir.

Q. What she cost, all the repairs put upon her when you were there, and the additional cost of the boiler?

A. Yes, sir. I made a deduction from that for natural wear and tear. I made a deduction probably of 10 per cent. in about three years. That is at the rate of about three per cent. a year.

Q. Are you familiar enough with steamboat property to know what is the usual depreciation by wear and tear of steamboats on the Hudson river?

90 A. It depends on the outlays and repairs you have annually.

Q. Assume they are kept in usual repair, do you know what is the usual depreciation?

A. Yes, sir; I should think not over 10 per cent. if kept up in good repair.

Q. Not over ten per cent. a year?

A. Yes, sir; if kept up in good repair. I have given my judgment on the supposition that the Charlotte Vanderbilt was kept up in good repair.

Q. Now, I understand you, you think the usual depreciation of the value of the Charlotte Vanderbilt had been about 10 per cent. a year?

A. Yes; about that.

Q. Can you tell me the tonnage of the Charlotte Vanderbilt?

A. I can't recall it to mind. To be frank with you, I haven't thought much about it in the last three or four years. I should think her length was 217 feet. She was twenty-three feet beam.

Q. Do you know the size of her engine?

A. Pretty near. It is guess-work again. I think it was 1256.

Q. About when was the last time you were on this vessel?

A. In 1880, about four years ago.

Q. You said you sold out, as I understand you, in 1879 or 1880?

A. About 1880. The company did not go out of business then. It is in business yet. I simply sold my stock; that is all.

Redirect examination by Mr. CANTINE:

Q. You said you couldn't call to mind the age of the boat at present. At the time you bought this boat for the company did you then know her age?

A. Yes, sir—well, I can't recall it now.

Q. You spoke of aggregating the amount that was paid for the boat, the cost of the repairs made, and the putting in of the new boiler, and of aggregating those three things together and then making the discount for natural depreciation for wear and

91 tear. Did you include in that aggregation what would be the annual ordinary repairs of the boat to keep it in the proper order?

A. Oh, no, I didn't include in that what it would cost to put the boat in order. I simply include in that what would be the natural wear and tear in depreciation.

Q. You don't understand the question, I think. I understood you to say you aggregated together the cost of the boat and the repairs which you made and putting in the new boiler; did you mean by that that the repairs that were made generally, or those special or extraordinary repairs made soon after you bought the boat you speak of and not the annual repairs?

A. I meant the repairs put upon her at the time, not the annual repairs. After I ceased to be a stockholder in the company I offered to buy the boat; it was the same year that I sold out to the company; that was before the new boiler was put in; it was a cash trade.

Q. Is the opinion which you have given of the value of the boat in July, 1882, your opinion of what her fair market value was?

A. I have traveled from New York to Catskill and Athens on steamboats for a number of years. After I ceased to be interested in this company I very frequently saw the Vanderbilt; she landed at Athens, where I lived.

Q. Had you been on board of her? I don't mean as master, captain, or officer.

A. I can't call to mind whether I was aboard of her or not.

Recross-examination by Mr. F. L. WESTBROOK:

I made an offer for the vessel in 1880, I think; I think it was in the spring of 1880—no, I am mistaken; it was the spring of 1881.

Q. You knew of her being sold under the mortgage in September, 1880?

A. Then it was in 1880 I made the offer in the spring; it was prior to her being sold. I knew of her being sold afterwards to a company south after that time.

Q. You know she was sold under a mortgage at public sale?

92 A. Do you refer to when she was sold to the company south and then sold under mortgage? That is the only time I knew anything about it; in fact, I don't know that she was ever sold under mortgage to my knowledge; I wasn't present at the sale and I don't know. It was in the fall, as I made an offer for her in the spring.

Q. It is stated here that on the 15th of September, 1880, she was sold and struck off to William Donahue for $12,000; you were not present at that sale?

A. No, sir.

FRANCIS BELL sworn for plaintiff and testified:

Examined by Mr. CANTINE:

I reside in Brooklyn; I am close on to forty years old—between thirty-nine and forty; my business is a pilot—a licensed pilot; I am licensed to run on the East river, Long Island sound, and part way up the Hudson; I have been a licensed pilot about eighteen years; I have never been a licensed pilot to run to Sandy Hook.

Q. Have you during the years you have been licensed as a pilot actually been employed in that business?

A. About all the time. I have been a pilot on board of the steam-yacht Yosemite from about the first of last October until the 16th or 17th of November following. I was never on board the yacht before I went on board of her as pilot. I had seen her before, very often on the waters of the East river and Long Island sound. I do not know how old the Yosemite is exactly.

Q. About how long had you known her before you went on board of her as pilot?

A. I think maybe three or four years; from three to five years, maybe. I had often seen her when she was running—that is, before I went on board of her.

Q. Before you went on board of her and after you were on board of her as pilot, had you ever seen her running with her sails up?

93 A. I never did; the only way I have ever seen her run was running by steam power; running her as a pilot during the time I have mentioned, I became quite familiar with the rate of speed she could run at.

Q. What was her usual rate of speed?

A. Sometimes she would go faster and sometimes slower; it would depend on circumstances.

Q. At what number miles per hour did you put it?

A. I have seen her go somewheres about twenty knots, and other times I have seen her go anywheres from twelve to fifteen. A knot is a nautical mile, and that is nearly a seventh more than a statute mile. She answered her wheel very quick as to sheering one way or the other. I mean the rudder wheel.

Q. During the time you were on board of her was she then rigged ship fashion, so if you turned your wheel to the right her bow moved to the right——

DEFENDANT'S COUNSEL: That fact is conceded and need not be proved.

Q. In what distance, when this boat is running at a rate of speed of fifteen or sixteen miles an hour or over, could you change your bow as much as two points on the compass?

A. I suppose about two or three seconds.

Q. Did you in running her observe how long it would take to stop this boat in a speed of as much as fifteen or sixteen miles an hour to be dead in the water?

A. Yes, sir; I think she could be stopped dead in a length and a half or two lengths of the yacht. I think her length is about 180 feet.

Q. Measuring it in time, about how long a time would it take to stop her with a speed of as much as fifteen or sixteen miles an hour to be dead in the water?

A. I suppose one-half to three-quarters of a minute.

Q. While you were aboard of her as a pilot what way did the yacht carry her sails?

94 A. I didn't see her have any sails while I was on board of her—that is, they were not "bent." When I say "bent" they

are fastened to the masts or spars ready for setting. She didn't have sails in any such place while I was on her. I didn't see them.

Q. Did you see this vessel along in July, 1882—along in the summer of 1882?

A. Yes; I guess I did. I don't know whether I did or not, but I think I did.

Cross-examination by Mr. BENEDICT:

I was pilot on board of this vessel for about a month and a half, running most of the time on the Hudson river. I think as far up as we went was about half a mile or so above Newburgh; that was the furthest while I was on her. During the time I was on her I guess I was up there probably maybe half a dozen times; not as far as Newburgh every time; that was only once. We stopped down around Iona island or West Point or anywheres where the governor took a notion to stop.

Q. Did you run her at night?

A. I think during the time I was on her we had our lights set one evening for about maybe 20 minutes or so until the last night that Mr. Tilden used her, and then we left Yonkers, I think, somewheres in the vicinity of 8 o'clock or probably a little sooner than that, and then we wore our lights to New York; that is the only time I can remember wearing lights. We run her then under mast-head light, red and green; that was, I think, either the 16th or 17th of November.

Q. You said Mr. Tilden. Did you mean Samuel J. Tilden?

A. Yes, sir; I don't know whether he owned her or not; he chartered her anyway.

Redirect examination by Mr. CANTINE:

Q. You say it was as long as about twenty minutes that you had her lights up. Where were you running to and from at that time?

A. If I am not mistaken, we were somewheres off Piermont when the sun went down and we set our lights to go down to Yonkers.

95 Q. When you got to Yonkers had it got really dark?

A. I don't think it had got really dark. That was a run of about 6 or 7 miles.

Q. At the time you ran from Yonkers down to New York what part of New York did you run to?

A. Foot of Ninth street, East river; that would be somewheres about 20 miles.

Q. How far north of Spuyten Duyvil was the place you started?

A. We started from Yonkers. I don't know the exact distance, but I should say it was 6 or 7 miles probably from Yonkers to Spuyten Duyvil.

Q. Have you ever seen any yachts on the river in the night-time that had the high mast-head light that were running, and also had a white bow light, making a central range light?

A. Yes, sir; that was on this trip we made from Yonkers down

to Ninth street, East river, that I was just speaking of. We met a yacht then—it was either the Utawana or the Viking—with the mast-head light and the bow light. She was going up the river and we were going down.

Recross-examination by Mr. BENEDICT:

Q. How large are those yachts?

A. I should say somewheres in the vicinity of two-thirds of the size of the Yosemite. They carried sail.

Q. That is the only yacht that you ever saw that carried such a light as that?

A. Yes, sir; that is the only one on the Hudson river. She carried her high light on her mast-head—foremast head. She had two masts—just the same rigged as the Yosemite—and carried a high light at her foremast head just as she did. I don't think she had a square-sail yard.

Q. Then she wasn't like the Yosemite. Does the Yosemite always carry a square-sail yard?

A. I have seen the Yosemite carry a square-sail yard. This yacht I speak of was under way. I saw her just about off Fort Washington point.

96 Q. Where did she carry any other light besides the foremast-head light?

A. Carried a red and green, a mast-head light and this bow light hung to the end of her bowsprit. I have seen several yachts on the Hudson river night and day; not so many nights as days. I have seen them passing.

Redirect examination by Mr. CANTINE:

Q. This yacht you spoke of that had the white light at the bow, you said she was carrying sail. Do you mean by that she had sails set?

A. No, sir; I mean she had sails attached to her; fore and aft sails.

Q. In seeing these yachts on the Hudson river, are not those mostly when they were running daytimes?

A. Yes, sir.

Q. From your observation, being on the Hudson river, isn't it an unusual thing for even yachts to run on the Hudson river under steam in the night-time?

A. Well, I don't know as that is an unusual thing. I suppose a man goes where he pleases.

Q. Have you ever seen any of them running in the night-time further up than Yonkers, on the Hudson river?

A. I don't think I ever did. I couldn't say positively I ever did.

THOMAS E. BRIGGS sworn for plaintiff, plaintiff having reserved privilege to examine as to value when he arrived, and testified:

Examined by Mr. CANTINE:

I reside at Athens; I have no occupation at present; I am building a dock up at Stockport; I have been most of my life boating; I know the steamer Charlotte Vanderbilt; I have bought and sold steamboats some; I have known of them being bought and sold other than those I have bought and sold myself; I was acquainted with steamboats in 1882 if I wanted to buy.

97 Q. What they were worth in the market, whether you wanted to buy or not, any particular steamboat that you were acquainted with?

A. Yes, I considered I did.

Q. What, in your judgment, was the market value of the steamer Charlotte Vanderbilt about July, 1882?

A. Well, I should judge she was worth $25,000 to $30,000.

Cross-examination by Mr. F. L. WESTBROOK:

Q. Either one, I suppose you mean?

A. Well, I said from $25,000 to $30,000. I should think she was worth $25,000. I live at Athens. I am building the dock at Stockport at present.

Q. You are a dock-builder?

A. No, sir; I am not the contractor, but I am paying for it; that is not my business, building a dock; my business most of my life has been spent in boating; that is all now.

Q. Doing nothing; you have been engaged in boating?

A. Yes, sir; all capacities, from cook to captain. I have been captain of sailing vessels and steamboats, large and small. I was four years on the S. O. Pierce, at Albany, a helper for tows.

Q. A little tow-boat?

A. I built her; she helps the big tows. I was captain of the Austin, one of the large tow-boats; that is all the steamboats.

Q. You have dealt in steamboats?

A. No. I bought the R. L. Maybee in 1859 and was captain of her. I don't know where she is now. I haven't heard of her for a long time. I don't think she got used up pretty generally. That is all I bought; in 1882 I was in the freighting business; did not own any boats.

Q. Ever own any other boats except the Maybee?

A. The S. O. Pierce; she is not very large; do not know when the Vanderbilt was built; I have no idea.

Q. Wouldn't the value depend very much upon the age?

A. In some cases.

Q. In all cases?

A. No, sir.

98 Q. Suppose the steamboat timbers were 40 years old. Would you value her much less than if they were only 10 years old?

A. Yes; I think so. I have no idea when the Vanderbilt was built. I was aboard of her in 1882.

Q. What for; what were you doing on her?

A. I went aboard of her to look at her to see how they had overhauled her, merely out of curiosity, when she was lying at Catskill.

Q. What time of the year was that?

A. Well, I don't remember the time exactly. I don't remember the month; nothing was being done to her then. I stayed aboard long enough to look around, perhaps 25 or 30 minutes. I didn't look at anything in particular. I just looked at her.

Q. Did you go all through it?

A. I didn't go into the hold.

Q. Do you base your opinion of its value upon that examination?

A. Well, not particularly.

Q. Upon anything else?

A. I have seen her around there two or three years.

Q. Been aboard of her?

A. Yes; yes, to go up and down the river as passenger; that is all.

PETER MAGEE, sworn for plaintiff, privilege to examine as to value when he came having been reserved, testified:

Examined by Mr. CANTINE:

A. I reside at Athens, N. Y.; my age is about forty-five; my occupation is ship-building; have been a ship-builder up there thirteen years; I have built steamboats; have never bought or sold any steamers.

Q. Was the Charlotte Vanderbilt on your ship yard in 1882, just before she was sunk?

A. She was there before she was sunk.

Q. Did she leave there about the time she was sunk at night?

A. Yes; that afternoon she left.

Q. While she was at your yard did you examine to see what condition she was in?

A. Yes, sir; we give her a kind of overhauling there; we had her out on the ways.

99 Q. How long was she there upon your yard?

A. I should judge she was there a week; I had her out on the ways.

Q. Were any plank taken off so you could see her timbers?

A. I don't remember distinctly whether we did or not, but my impression is——

Q. Your best recollection in regard to it.

A. My best recollection is that there were some taken out.

Q. What did the condition of the boat seem to be from such examination as you made of her and what you saw of her in your yard?

A. I considered the boat in a pretty fair condition; of course I couldn't consider her a new boat.

Q. Did you notice if she had a new or an old boiler in her?

A. No, sir; I did not.

Q. What steamboats have you built?

A. Well, we have built the Kaaterskill, the City of Catskill, the Minnie Cornell, the New Brunswick, the Belle Horton, and a number of other vessels that I can't remember; I have also repaired steamboats for the last ten or fifteen years upon my yard.

Q. Are you acquainted with the cost and value of machinery, engines, and boilers?

A. Well, I think I understand; yes, sir—that is, from what I have learned; I have learned those things in connection with my business as being a boat-builder.

Q. Did her timbers appear, so far as you saw, to be sound?

A. So far as my knowledge goes; yes, sir; the state-room hall and the state-rooms were carpeted when she was there; it appeared to be new carpet; I thought so; the boat appeared to be furnished with bedding, bedsteads, &c., for a passenger-boat; the state-rooms were in the state-room halls and the berths below.

Cross-examination by Mr. WESTBROOK:

I was superintending the work upon her; I was there superintending the work; I don't work myself; I was there "bossing the men," I mean by "superintending."

100 Q. Well, you went all through the steamer?

A. I can't say I did; no; only where my business called me to go; my business was repairing.

Q. What did you repair?

A. Her bottom and everything else that needed——

Q. What did you do to the bottom?

A. I stripped the copper off and caulked and did anything else that was necessary.

Q. What else did you do?

A. I can't remember; I can't say that was all; we likely fixed her guards and probably things on deck; I can't remember; I can't say; we fixed her bottom, and that is all I can remember; I didn't go snooping around the boat about what didn't concern me, but look after what concerned me.

Plaintiff offers in evidence section 4233 of the Revised Statutes of the U. S., commencing at page 820 of the first edition, being the 1st to 14th rules for preventing collisions on the water; also "Steering and Sailing Rules" from rule 16 to 24, inclusive.

Plaintiff offers in evidence such parts of the Revised Statutes as regulates the license of officers on board of steam vessels, of their inspection and equipment, as each party may desire shall be deemed in evidence and may be referred to and treated as in evidence.

Objected to as immaterial. Objection overruled. Exception.

Plaintiff reads from the general rules and regulations prescribed by the board of supervising inspectors of steam vessels, approved February 25th and 28th, 1882, by Chas. J. Folger, Secretary of the Treasury, commencing on page 40, beginning at rule 1 down to and including rule 9; also, at page 44, diagrams in illustration of the

foregoing rules, beginning at the first situation down to and including the 7th situation; also rule 44, p. 31.

Plaintiff offers a certified copy of a license to Jeremiah
101 Whittaker; U. S. inspectors' certificate to pilots; received and marked "B," C. B. P.

Plaintiff rests.

The defendant moved to dismiss on the following grounds:

First. That the Yosemite at the time carried lawful lights; that she came under rule three of the statute requiring a head-light and the colored side lights; that she was not a coasting vessel nor proceeding under the coasting law, but was expressly forbidden by the statute to engage in the coasting trade; that she did not come under rule seven, but was, as in that rule stated, "otherwise expressly provided for;" that she was a yacht under section 4214 of the Revised Statutes of the U. S. and not a coaster, and that she was an ocean-going steamer, and also was a steamer carrying sail and had a yachting license and not a coasting license.

Second. That the plaintiff has failed affirmatively to disprove contributory negligence.

Third. That it was negligence in law on the part of the Vanderbilt to give the two whistles after she had responded by one to the one from the yacht Yosemite.

Fourth. That the pilot was incapable.

Fifth. That the Vanderbilt was guilty of contributory negligence in not having a proper lookout at a proper place.

COURT: In respect to the defendant's negligence, which is one of the grounds of the motion for a nonsuit, the court of appeals having decided that the Yosemite at the time of the collision was not carrying proper or legal lights, I am concluded here by that opinion. In view of the history of this case I am constrained to let it take the direction which was given to it upon the former trial, and therefore deny the motion for the nonsuit.

102 Exception to the ruling in each particular by defence.

Plaintiff offers maps in evidence, one of which is the regular coast-survey map of nearly all the Hudson river.

Received and marked "C & D," C. B. P. See p. 286.

The defendant's counsel read from the testimony of JEREMIAH WHITAKER, the pilot, upon the former trial as follows:

Q. How was your boat headed when you put your glasses up and looked down and saw those three lights there?

A. Headed way off to the eastward of the light, about on what would be called Dinsmore's place. The first thing I heard from what turned out to be this yacht was one whistle. I then blew one right away.

Q. Did you up to that time see any other lights on that vessel except that high light?

A. Yes, sir; I saw a dim red light. I first discovered that dim red light just before he blew his whistle.

Q. You say "just before." Can you indicate to us anything by measure of time?

A. Yes, sir; all the time there was was to say to the lookout, "There's a dim red light," and I got one whistle.

Q. The moment you saw that dim red light what impression did you have as to the character of the vessel that it was on?

A. I couldn't tell what it was on. I made the remark to the lookout that it was a vessel of some kind; I couldn't tell what it was; I didn't have any range or light to tell. That vessel at that time bore on my starboard. In looking off from the right-hand bow of my boat I could see them.

Q. Which way did the yacht appear to be headed from the time you got the first whistle until you got the two whistles in answer to your two? The yacht blew one whistle and you answered that one whistle, and then a moment afterwards, as soon as you could, you blew two whistles and she blew two in answer. Now, from
103 the time you got the first one whistle until you got the two whistles in answer to your two what way was that yacht then apparently headed?

A. I couldn't tell. All I had to go by was that red light. I had no range or white light to tell what course she was headed at all.

Q. At the time you gave those two whistles you were seeing at that time, as I understand you, this high light and the red light?

A. Yes, sir.

Q. How long before that had you seen those two lights?

A. Just as I saw that dim red light I got a whistle; that's the first whistle.

Q. I understand you to say you saw this red light just about the time you got the first whistle?

A. Yes, sir.

Q. When you were examined before the inspectors you testified that when you received the first whistle from the Yosemite the vessels were about 500 yards apart?

A. Yes, sir; as near as I can judge. Probably it might have been as far as that and probably not as far. That was my best judgment at the time; I couldn't tell for sure, of course.

Q. Have I understood you to say here that with those vessels 500 yards apart you could not have ported your wheel?

A. That's what I said.

Q. I understood you to say you at first had some doubt about what the lights were; you didn't understand what they meant?

A. The first time I saw them I thought they were tows.

Q. Hadn't you given the impression here on the stand that you didn't understand what those lights meant?

A. Yes, sir; after I got out of the range of the two lights I didn't understand what they were.

Q. If you didn't understand what they were, did you not understand that it was your duty to stop?

A No, sir.

Q. You don't so understand that now, do you?

A. No, sir.

Q. You understand it is the duty of a careful pilot who sees a light ahead that he doesn't understand to go ahead and not
104 stop? He is bound to stop until he finds out what they are?

A. If you stop and the lights are a mile or two ahead of you I don't know how you are going to find out what they are.

Q. Did you understand what these lights were when you were a mile apart?

A. No, sir; I didn't understand, only I took them for a tow.

Q. Then, when they got out of range you didn't know what they they were?

A. No, sir.

Q. Were they a mile apart then?

A. I can't say. The distance from the time I first saw them I should judge was probably from a mile to a mile and a quarter—that is, from the lower light to the ice-house.

Q. How far were you from those lights at the time when you saw them get out of the range so you knew they were not from a tow?

A. I couldn't say how far apart they were; lights are very deceiving in the night.

Q. You didn't understand it was your duty to check your speed, not knowing what the lights were?

A. No, sir. Capt. Wolf was captain of my vessel. I don't remember his coming forward after the collision.

The testimony of JAMES MOON, taken on the previous trial, was read by the defendant:

I reside at Malden, town of Saugerties. My business is a pilot; have been a pilot eighteen years on different vessels; have been a pilot on steam vessels for eighteen years. Before I was pilot on steam vessels I was pilot on sailing vessels eight years—that is, as a pilot or captain or whatever you mind to call it—and had charge of the steering of sailing vessels. I recollect going down on the steamboat "Ansonia" on the night of July 14th, 1882, being the night on which the collision took place between the yacht Yosemite and
105 the Charlotte Vanderbilt. I met something that appeared to be a yacht that night; met her between Poughkeepsie and the Elbow (Krum Elbow).

(Objected to, that it is not shown to be the Yosemite.)

Opposite Clearwater's quarry.

Q. What was it you observed of what proved to be this vessel you met?

A. I saw a high bright light and a distinct red light. I saw them both at the same time.

Q. How far were you apart at that time?

A. At the least calculation, two and a half miles and from that to three miles.

Q. When you first saw that light upon this vessel could you determine what was the character of the vessel or what way she was going?

A. I could tell what way she was going, because I could see her red light. I could not determine the character of the vessel.

Cross-examined by Mr. BENEDICT:

Q. On which side of this vessel did you pass?

A. Port side. It was to the east of me.

Q. You said you could tell which way she was going on account of the red light; that is the way the red light told you she was going, wasn't it?

A. Yes; and the high bright light.

Q. You speak of the high bright light. What was the difference between that and any other?

A. It was one white light where we have two on the river. This was one single light.

Q. Is Clearwater's quarry north or south of the ice-house?

A. There is one north of the ice-house and one south; this one was right about opposite the ice-house.

Q. Which is just below Krum Elbow?

A. Yes, sir; the quarry is just below the ice-house; about a stone's throw from the ice-house; the ice-house is about a mile and a half from Krum Elbow; I mean the upper ice-house—Clearwater's quarry.

106 Q. How far is that from Poughkeepsie?

A. Well, I never measured it; about three and a half or four miles.

Q. How far from the Esopus light-house?

A. I can't say the distance; in the neighborhood of 8 miles, I should think.

Q. How far is that ice-house or Clearwater's quarry from the Esopus light-house?

A. About 8 miles, I should judge.

ALLEN G. GAGE sworn for the defendant and testified:

Examined by Mr. BENEDICT:

I reside at New Baltimore; my business is a pilot.

Q. How long have you been a steamboat pilot?

A. I could not tell exactly; as much as twenty years on the North river, pretty much all the time. I am attached to the St. John, running from Albany to New York now. She is a night boat in the People's line.

Q. How long have you been pilot of that boat?

A. This is the fourth summer.

Q. Do you remember going down on the river on the night of July 14th, 1882?

A. Yes; I was there about that time, I guess. I remember meeting the lights of a vessel in the neighborhood of West Camp. I saw red and green and white lights.

Q. How far were those lights away when you first saw them?

A. I don't know as I could tell you that exactly; we were some-

wheres coming across East Camp cross over when I saw the lights first, somewheres around there; they were down this side of Bristol, I think; I don't know how far this side; little ways, at any rate.

Q. Was the place where you were above West Camp?

A. Yes, sir; East Camp cross-over is above West Camp; we were between East and West Camp then.

107 Q. These lights that you saw were down where with reference to Malden?

A. Somewheres near Malden. Bristol and Malden is the same thing. The boatmen generally call it Bristol.

Q. What did you understand when you saw those lights?

A. Well, I thought it was a sea-going vessel of some kind when I first saw it. I said it was, at least.

Q. How far away from the vessel did you pass?

A. Well, perhaps 200 feet when we passed each other. She went to the eastward and we went to the westward; passed to the right of each other.

Q. How did you come to know that was a sea-going vessel or that those were the lights on the sea-going vessels?

A. It was the customary lights.

Q. Did you as the vessel passed you recognize what kind of a vessel it was?

A. Yes, sir; I thought it was a large yacht of some kind. I didn't know the name.

Q. Do you know what time of night that was?

A. No; I don't know that I could tell. It was somewhere around twelve and one o'clock, I think. I never took much notice, for I never paid much attention to it. I never supposed I would be here.

To Mr. F. L. Westbrook: The East Camp cross-over is just this side of Germantown.

Q. West Camp is about two miles above Bristol?

A. I don't know; it may be about that.

Q. And you were about a mile above West Camp?

A. I should think just about that. In regard to her being right at Bristol, I couldn't tell exactly. I never paid much attention to the case at all and I didn't notice it at all. I didn't hear anything about it until I was hailed, and they told me there was a boat sunk there.

Q. You remember, however, of this being the night the Vanderbilt was sunk?

A. Yes, sir; I noticed the lights and knew it was a sea-going vessel of some kind—either a yacht or a skipper.

108 Q. Tell me on what deck of the St. John the pilot-house stands.

A. I suppose they would call it the promenade deck. Our pilot-house floor is about six feet above that deck.

Q. How far forward of the pilot-house does this promenade deck extend?

A. Well, I never measured it. I should think between 40 and 50 feet.

Q. How near to the stem does it come?

A. About the same distance; about 30 feet, I guess.

Q. From your experience on the river, where are lookouts usually placed on steamboats?

A. Generally on that deck; on what they call the promenade deck of ours.

Q. Whereabouts on that deck?

A. They are supposed to be somewhere near the front end of the deck; within 20 or 30 feet of the pilot-house; some little distance from the pilot-house, so they can see her.

Q. What do you say to the brilliancy of those lights that you saw as compared with other lights on the river?

A. I didn't pay very much attention to that in particular, only I knew that I saw her lights for quite a distance off and made a remark what it was—that it was a sea-going vessel of some kind coming. As to the comparative brilliancy I can't say.

Cross-examined by Mr. CANTINE:

Q. Where were you employed on vessels before you were employed on the St. John?

A. On the North river. Just before, do you mean?

Q. You say you have been about twenty years a pilot and this is the fourth year on the St. John. Where were you the sixteen years before?

A. Seven years from Staten island to New York on the ferry-boat—on the North Shore line of ferry-boats. I had charge of the Thomas Collier. I was pilot and captain of her for seven years. Before that I was what we call a North river tow-boat pilot, except one year, when I was master of the tow-boat Ontario. The route
109 from the north shore of Staten island to New York runs across what is called New York bay.

Q. And all sea-going vessels that come by way of Sandy Hook, either into or out of New York harbor, have to come over substantially the same route your ferry route went over?

A. They don't steer the same route. From the upper end, or near there, of Staten island to the battery they are about on the same route. I run my boat in the daytime and part of the evening, I suppose.

Q. How late at night?

A. Well, when I was running the boat to the Bay Ridge we used to run up late nights.

Q. There you ran from what points?

A. From Twenty-second street, and Dover street and pier 8 we landed at. Bay Ridge is opposite the Kill Von Kull.

Q. And to go there you run across New York bay?

A. Yes, sir; I have generally went the ship channel when we went down there. In going that route I saw sea-going vessels coming in and going out of New York.

Q. Is it usual for sea-going vessels to come up to the city in the night-time?

A. There's a good many that do come up in the night.

Q. Are those that do come up, and come up in the night, those that are running on what are known as "coast routes"?

A. In regard to that I couldn't say. Small-class ships come in most any time of night.

Q. Do you know anything about the rules with foreign steamboats that come to the port of New York, that they can't pass the quarantine after sundown, and they can't come up to the city until next morning after sunrise?

A. I don't know anything about that. They do come up.

Q. Foreign steamships?

A. I don't know what you call foreign steamships.

Q. Running to points outside of the United States, ocean steamships.

A. Savin Rock ships do you call "foreign"?

110 Q. Yes.

A. I can say they do. I think I have seen them come up in the night.

Q. In running on the Hudson river, since you have been pilot on the St. John, do you recollect of meeting, north of New York, on the Hudson river, in the night-time, any sea-going steamships with one high bright light and with colored side lights and no bow light? I will say above Spuyten Duyvel?

A. I have seen ship-rigged lights under way with steam on; not a great many, unless they were yachts. I have passed such vessels up as high as just below Poughkeepsie in the night-time, and they were running.

Q. How many would you put it that you have seen of that class of vessels within the last four years?

A. I couldn't say as to that. Not a great many.

Q. Would you put it at more than three or four or five?

A. You mean with the lights rigged in that way?

Q. Yes, sir.

A. I never paid no particular attention to it, but I think I have seen as many as five or six, and maybe seven, and maybe more. I don't know. I will put it down to that anyway.

Q. There was nothing to call your attention particularly to it, was there?

A. No, sir; I didn't pay much attention to it because I was accustomed to that kind of lights.

Q. You got accustomed to it when you were running on the North Shore ferry?

A. Yes; more accustomed to it there than any other place. I was around among the ships a good deal.

Q. When you met this vessel on the night of July 14th, do you want — be at all certain about the time, as to whether it was before or after 12 o'clock?

A. No, sir; I couldn't tell about that. It was somewheres along there I said—somewheres near that neighborhood.

Q. You didn't look at your time?

A. I always look at the time there, most always; never
111 pass that place without looking at the time, but as a general thing I couldn't remember that time. Whenever we straighten down by the West Camp docks we always take our time.

Q. What is your usual time when you get down there in the summer time with fair weather and without any obstruction?

A. A quarter to 12 and half past 12; between those times.

Q. Don't you get down there sometimes as early as a quarter past 11?

A. We might during the freshets in the spring and light loads; we generally take our time there and at Kingston and at Poughkeepsie and all along.

Q. What time do you generally get to New York?

A. Our usual time is along 7 o'clock, or perhaps a few minutes after; we leave Albany at 8 o'clock.

Q. How far is it by river from Albany down to West Camp where you straighten down?

A. About 42 or 43 miles.

Q. When you get down so you are passing Rhinebeck and going down the river what course do you sail from there before you turn to make the Esopus light?

A. We steer southwest half west—that is, a point and a half west of south.

Q. On what object on the shore does that strike?

A. We generally carry that down to what we call Sturgeon point, at Port Ewen; we steer south before we get to the ice-house there; then we change our course south and run that until we get to the upper ice-house and then we steer south-southeast.

Q. When you are steering the south course does that bring you about in range with Esopus light?

A. It brings us to the westward.

Q. But it is not much to the westward?

A. It is about half way between the light and the land; when we get opposite the upper ice-house we haul off two points east of south.

Q. What point on the land does that strike?

A. On that point I don't know what they call it; I believe they call it Dinsmore's.

Q. You carry that till you get down about opposite the light?

112 A. Not down to the light; perhaps within a quarter of a mile of the light, and then we commence to straighten down to get around the light; then we take a south-southwest course.

Q. You have spoken of where you had your lookout placed; I take it from what you say that he is not less than 30 feet back from the bow of the steamboat?

A. Somewheres thereabouts; I never measured her bow and I can't tell anything about it; it is perhaps 50 or 75 feet, for all I know; the first deck on the St. John is the main deck; her next deck is called, I suppose, the "promenade deck;" that is the deck

that is on a level with the lower tier of state-rooms; my boat has two tiers of state-rooms and the second tier is a gallery running around.

Q. Is there a deck that runs out from the second tier of state-rooms?

A. Yes, sir; that's the deck that the lookout stands on.

Q. And your pilot-house, then, is 6 feet above that?

A. Yes, sir; our pilot-house floor is; I should think about 6 feet.

Q. How many feet, in your judgment, is it from the water in height up to the floor of the deck on which the lookout stands?

A. I should think 18 to 20 feet; somewheres along there; I don't know but more; I don't know how far she is between decks; I think she is about 7 or 8 feet between decks.

Q. The first deck above the main deck does not extend way out to the bow of the boat?

A. Way out to the flag-staff; the next deck does not go out as far as that and it is on that next deck where the lookout stands.

Q. If the lookout was placed on the second deck below you, but way out to the bow of the boat, could you hear?

A. Yes, sir.

Q. Would you think that was the proper place to put him to enable him to reasonably signal the pilot-house?

A. No, sir; not the way our decks are rigged. Every deck would kill the sound of the voice.

113 Q. It is necessary that the lookout be sufficiently near the pilot-house so his voice will be unobstructed and so that he could make you clearly understand what he was saying?

A. Yes; it is our calculation. If he don't let us know that he says anything we suppose everything is clear.

Redirect examination by Mr. BENEDICT:

Q. The St. John is one of the largest boats on the river?

A. She is the largest in length and width. I remember the celebration at Newburgh last year. I went by there while that was going on. I remember seeing a good many sea-going vessels up there at that time.

Q. How many do you suppose you saw there at that time?

A. I saw two or three in the Highlands, and I guess two or three up there; I don't know how many; I didn't pay much attention to them; quite a number of ships; there were no colored lights on them then; they were at anchor.

Recross-examination by Mr. CANTINE:

Q. I suppose you are acquainted with the large steamboats that run on the Sound to New Haven and Newport and Fall River?

A. I have seen them.

Q. Don't they carry the central range lights the same as on the Hudson river?

A. They carry the lights about as we do. The St. John has masts upon her. I don't know whether I can tell how many.

Q. How high do these masts extend above the water?

A. Well, 50 or 60 feet, I guess.

Q. How high above your hurricane deck, do you suppose?

A. I should think 35 or 40 feet, or somewheres along there.

Q. How large are those masts where they come through the main deck?

A. About all the way of a size. They may be a little larger at the bottom.

114 Q. About how large down at the bottom?

A. Well, I suppose about 15 inches through, perhaps; maybe not so large as that. I never measured them; maybe not over 12. I say 12 to 15 inches through. I think our aft light hoists above those masts. Our aft light never hides from the spars, for when we are coming "head and head" only the pipe hides them when they are on a quarter.

Q. In meeting steamboats don't you find that the central range light isn't as high as the smoke-pipes on the steamboats that have but one pipe, like the Ansonia?

A. I think the pipes hide the lights when they are on a quarter; if they sheered so as to show the green or red light it would show the aft light.

ALFRED JOHNSON, being duly sworn, examined, deposes and says:

Examined by Mr. BENEDICT:

I am twenty-eight years of age; I was born in Sweden; I am a sailor; I have followed the sea since I was fifteen years old; I am not attached to any vessel now; I don't know when I expect to go to sea; I expect to go whenever I get a vessel; I was on the yacht Yosemite in July, 1882; I was quartermaster; I was on board of her from January, 1881, till November, 1882, while she was running; I left her in November last and have not belonged to her since; I have been to Sweden since; I returned to New York the 6th of April, I believe it was.

I was on board of the Yosemite at the time of the collision with the Charlotte Vanderbilt. I was right forward by the foremast. I went there at nine o'clock. I was there to keep a lookout. There was forward of the foremast besides me the harbor pilot; I forget his name; we called him Jack on board. He was alongside of me walking fore and aft and athwart ship.

115 The first I saw of the Charlotte Vanderbilt was her lights. I saw her red, green, and bright lights. They were right ahead of us.

It is hard to tell how far away they were when I first saw them. It was about a mile anyhow.

I reported the lights. The first whistle I heard was blown by the Yosemite. That was one whistle. There was no answer to it, and then we blew another one whistle. That was answered with one whistle from the Charlotte Vanderbilt. At that time her lights

were bearing about a point on our port bow. Both her red and green lights were not showing then. She had closed her green light out and was showing her red.

After she blew her single whistle we were going right along for a little while, not long. Then the Charlotte Vanderbilt blew two short whistles and at the same time shut off her red light and showed the green. We answered on the Yosemite with two short whistles, and then the pilot rung the bell—four bells—to slow down, stop, and back. I stayed forward until she struck, and then I walked aft. I noticed how the vessels came together. The Yosemite struck the Vanderbilt right on the starboard forward gangway and went right through her. I went aft and began to make the boat ready to lower. I got it down. When I got aft I know the Yosemite was backing.

Q. At the time when the Charlotte Vanderbilt blew her one whistle, if both vessels had kept their course or ported their helms, would there have been any collision between them?

A. No, sir.

Q. What change of course, if any, did the Charlotte Vanderbilt make after she blew her one whistle?

A. She starboarded her helm.

Q. How long after?

A. It was only a few minutes.

Q. Could you tell which came first, her blowing two whistles or her starboarding her helm?

A. It was at the same time.

Q. If she had not starboarded her helm, would there have been any collision?

A. No, sir.

116 Cross-examined:

When I went over to the old country after I left the Yosemite I went as a passenger.

I could not tell if I shall go on the Yosemite again. I do not know.

I have applied to Capt. Eldridge to take me, but it is not settled yet. I have not been under pay of Capt. Eldridge or of the defendant in this suit since I left the Yosemite. I have been employed on a steam vessel besides the Yosemite. I have been on six different steamers before—about two years and a half in all. Four of them were ocean-going steamers. I was sailor before the mast on all of them. I was quartermaster all the time I was on the Yosemite. The duties of the quartermaster are to take the wheel and to keep watch on deck. We are six hours on duty and six hours off. When I am at the wheel I am wheelsman, obeying orders how to steer. On this trip up the river I was stationed as a lookout on the forward part of the boat. I was put there about nine o'clock and I continued there till this collision. I relieved one of the sailors as lookout, but I don't recollect his name. The Yosemite started on that trip from New York city. I guess it was about four o'clock that we started from the Battery. I can't say exactly where it was on the river that I was stationed on lookout. Jack had no business at the

time forward; he was just walking round. I can't say how long before the collision he had been forward. Just before she struck he said, "There is going to be a collision," and he ran aft. I won't say whether he had been forward five or ten minutes or more or less. I noticed a light-house that we had passed a little before the collision. We had passed the light-house when we first saw the Charlotte Vanderbilt. We left the light-house on our port side; I can't say how far from it we passed.

I think we were a little nearer to the east side than the Charlotte Vanderbilt was when we first saw her; that is my calculation; that is what I believe, but I won't say positive.

117 When the Yosemite gave the first whistle to the Vanderbilt I couldn't say how far apart the two vessels were.

From the time I reported the light till I heard the first whistle from the Yosemite was about a couple of minutes.

When that first whistle was given the red and green and the white lights on the Vanderbilt were visible.

At that time the Vanderbilt appeared to be coming on our port side.

Q. Will you swear that the Vanderbilt had not given any whistles to the Yosemite before you heard the first whistle from the Yosemite which you have mentioned?

A. I will swear that I did not hear any whistle from the Vanderbilt until after I heard the whistle from the Yosemite.

From the time that the Yosemite blew her first whistle to the time when she blew her second single whistle was long enough to have got an answer, and we had not got an answer.

I couldn't give an estimate of the time between those two whistles.

Q. In your judgment, how far were the two vessels apart when the second single whistle was blown by the Yosemite?

A. I couldn't say. I heard the answer from the Charlotte Vanderbilt right off after the second single whistle from the Yosemite. Up to the time of this second single whistle from the Yosemite I had been able to see the colored and white lights of the Vanderbilt.

Q. Up to the time that the Vanderbilt answered this second single whistle had you been able to see both colored lights and white light of the Vanderbilt?

A. Yes.

Q. When was it that either of her colored lights was shut out?

A. At the same time that she answered that whistle she shut out her green light.

Q. In your opinion were the boats half a mile apart at the time the green light was shut out?

118 A. I couldn't say; quite a distance. I can't undertake to measure it. Up to that time the Yosemite had not changed her course so far as I noticed. I don't know whether she had or not. I was not taking any particular notice whether our vessel was changing her course; that was no part of my business. I couldn't say how long it was from the time the Vanderbilt answered the second single whistle to the time she blew the two whistles.

The Yosemite answered the two whistles right off. The two vessels were then pretty close—a couple of ship's lengths, some 300 or 400 feet; that is my opinion.

Before the two whistles were answered by the Yosemite I had heard no bells on our vessel.

I couldn't tell how near the two vessels were together when the four bells were rung.

These four bells were rung in the regular order; just a little interval between them.

In my judgment they could not have been run any quicker so as to be distinguished.

When the bow of our boat struck the starboard gangway on the Vanderbilt I couldn't say whether the speed of the Vanderbilt had lessened or not.

The first chance I had to see whether our boat was backing was when I ran aft to lower the boat; she might have been backing before. When I got aft to lower the boat our vessel had cut through the Vanderbilt.

I did not start to go back till the two boats had struck.

When I started to run back I was by the foremast, just forward of the foremast.

The boat I went to lower was hanging on the starboard quarter. I can't say how many feet from the stern.

From the place where I started to run aft to the place where this boat was was more than half the length of the ship.

I lowered the boat, but did not get in.

119 When I lowered the boat our vessel was then standing still.

I could not then see the lights of the Vanderbilt; I did not look.

I did afterwards see a light on her, but don't know where it was. At this time our engine was not turning. I can't say how far the vessels were then apart. I wouldn't want to say it was half a mile.

Q. You answered on your direct examination that the Charlotte Vanderbilt starboarded her helm after the one whistle. Now, could you see from where you were whether she starboarded or ported her helm?

A. I couldn't see the wheel, but I could see by the lights which way they went.

Q. If the Charlotte Vanderbilt had kept her course and your vessel had ported her helm would that not have made the same apparent change in the lights on the Vanderbilt and caused the green light of the Vanderbilt to be shut out from your view?

A. If she had held her course and we ported, that would have shut out her green light.

The case was then opened to allow the examination of CHARLES CRAMER, who was sworn for plaintiff and testified:

I reside in New York at present. I am captain and pilot on a tug-boat. I have been captain and pilot five or six years. I am acquainted with what is known as the central range lights—a white light on the bow and a white light aft on the flag-staff. The white

light on the flag-staff aft shows all around the horizon; when following another steamboat you can see their stern light.

Cross-examination by Mr. WILSON:

I determine the course of a vessel when I see her in the nighttime by the range of white lights, if she has them, and by her colored lights.

Q. If you saw a white light, then it is a steam vessel. Is not the difference between the lights of steam vessels and the lights
120 of sailing vessels that steam vessels carry white lights and sailing vessels do not?

A. Yes, sir.

(COURT:)

Q. What do the white lights indicate to you?

A. Steamboat.

HENRY B. CRAIG sworn for the defendant.

Examined by Mr. BENEDICT:

I reside at Greenbush, N. Y.; I am fifty-nine years old; my business is master and pilot on steamboats; that has been my business for thirty-five years on the Hudson river and Bay of New York, from Troy to New York.

Q. What lines have you been running on; what boats have you run?

A. The first steamboat I was pilot of was the steamboat "Indiana," thirty-three years ago. I went pilot of her one year. The steamer "Austin" was built the next year and I was pilot of her two years. After that I was pilot two years of the steamboat "Anna." Then I was promoted to captain or master. Since that time I have acted as pilot of the steamboat "Chauncey Vibbard," one of the fastest boats that ever went up and down the Hudson river, and also I have been pilot from Albany to New York on the steamboat "Escort," now in this Catskill line of boats, belonging to that line, as I understand. Since that time I have been captain of the steamboat "Syracuse," in the towing business from Albany; the steamboat "Ohio," from Albany, and the steamer "McDonald," in the towing business from Albany, and the steamer "America" and steamer "Niagara." All those last-mentioned boats I have been master of, and also have a first-class pilot's license to go as pilot. During my experience I have run up and down the river at all times of day and night.

Q. How familiar do you call yourself with the channel and the lights?

A. I am perfectly familiar with the channel and lights and
121 the navigation of the Hudson river from Troy all the way to New York and down as far as the upper end of Staten island. I remember this collision between the Yosemite and the Charlotte Vanderbilt. I was acting as pilot of the Yosemite at that time. I

went on board the Yosemite while she was at anchor off the Battery, New York harbor, at 3 o'clock in the afternoon of the fourteenth day of July, 1882. I took charge of her there at that point as pilot.

Q. From that time, as you came up the river, how much of the time were you at the wheel?

A. All the time from the time we left New York until we got up above where this collision took place, except what time I was below to get my supper—that was between Piermont and Dedica Hook.

Q. You don't remember how long it was after you got aboard before you started?

A. We left there at half past three o'clock; got under way at half past three o'clock in the afternoon.

Q. How far is it from that point where you got under way up to the point of this collision?

A. About ninety-five miles. The collision was a little after 10 o'clock in the evening. The tide at the time of the collision was flood tide.

Q. Who was with you in the pilot-room?

A. Captain Eldridge.

Q. How far from the stem of the Yosemite is the pilot-house?

A. Well, I should judge about 50 feet.

Q. What was the rig of the Yosemite?

A. Schooner-rigged, carrying sail; a square-sail yard about the cross-trees of the forward mast and the sails furled on the yard. From where I was in the pilot-house I could see the forward deck of the Yosemite. Two lookouts were out there. There were others there. The mate of the Yosemite was there and the owner, Mr. Belden. It was an ordinarily dark night. There were some clouds, but not many.

Q. Do you know anything about any thunder storm in the north?

122 A. I didn't see any. I am rather familiar with thunder storms and know how they look. When I see one I recognize it. I was looking in that part of the sky. I saw nothing at all that looked to me like a thunder storm.

Q. How was it as to it being a good night to see lights?

A. What I call a good night to distinguish lights or any objects on the land.

Q. Did you pass any of the night steamboats on the way up?

A. I did. I mean I met them.

Q. Which side of the river did you pass them?

A. We met on that night up a number of steamboats bound down. We met the Newburgh boats, the Poughkeepsie boats, the Kingston boats, and we met the Saugerties boat, and we met before that one of the Coxsackie propellers, and I can't say now which side we passed the whole of them.

Q. What can you say as to which side you passed the most of them?

A. We passed the most of them—we kept to the eastward and they kept to the westward. I remember meeting the St. John. We met her abreast of West Camp.

Q. Whereabouts in the river were you when you came about Esopus light?

A. About the middle of the channel.

Q. When did you see the lights of what proved to be the Charlotte Vanderbilt?

A. Abreast or a little north of Esopus when I noticed her. We were heading then on our course a little west or outside of what we call Rhinebeck bluff.

Q. (Showing map.) That is opposite the Rondout light?

A. Yes, sir. As we came around the light about in the middle of the channel, that gave me a course steering just clear of the Swaney plot by the Rhinebeck bluff.

Q. What lights did you see?

A. I saw a steamboat coming down from above with the usual lights.

Q. State the lights you saw.

A. The range light, head light, and the aft range lights on
123 her after flag-staff; red light on the port side. That indicated to me which way she was headed at that time.

Q. What is the object of having the red light on the side?

A. To give me to understand that she was heading to the left or the westward of us, as I did not see a green light at all. It was hid from my view entirely. That language is well known to all experienced pilots.

Q. That is to say, that she, being headed to the left of you, makes to the right of them as they were coming down?

—. Yes, sir.

Q. Go on from that point and tell the jury the story.

A. We were coming, as I stated in the first place, abreast or a little north of Esopus light-house. Then the Vanderbilt probably was a mile or maybe more than that (I couldn't distinguish exactly in the night) away from me to the north. I blew one whistle. To that I got no answer. I waited a proper time. I blew again. To that I got an answer of one whistle. I then immediately changed my course a little more to the eastward, heading partially on to the east line, and steadied the Yosemite. The Vanderbilt at this same time kept her light in my sight, and there was an unobstructed view between the Yosemite's red light and the Vanderbilt. Consequently he had the same opportunity to see our red light that I had of seeing his. In about 30 or 40 seconds after he answered my whistle with one, he, being to the westward of us, blew two whistles and gave his steamboat a rank sheer to the eastward across the bow of the Yosemite. We being so close together at that time, it was impossible for me to blow my whistles and change my course and clear him. Consequently I undertook to blow the three alarm whistles, but before I had time and room to do it and ring my bells to stop and back we came in collision.

Q. What did you do then?

A. The Vanderbilt came far enough across our bow—she was then nearly straight crossways of the river—across the bow
124 of the Yosemite. We struck her in her starboard forward

gangway and cut her in two nearly straight across, going out of her port gangway on the opposite side.

Q. Did you ring any bells to stop the engine?

A. Yes; I rung four bells to slow, stop, and back immediately after blowing the whistles. The bells and whistles all come right together. I didn't have time to blow only two whistles. I got hold of the pull and rung the bells to slow, stop, and back, and the crash came. They were all right together and immediate. If I may be allowed, I saw a couple of little models here and I would like to lay those models down upon this map and give the position we were in and give this court and jury a chance to look at it and see the position the yacht and steamboat were in when they came together. When I first saw him he hadn't gotten down to the ice-house; all he could see was our large mast-head light and he could see my red light on the port side. When I discovered the steamer coming I gave one whistle and that whistle he didn't answer; consequently we kept coming on the same course. I blowed one more whistle at the proper time and immediately after that I got answer of one whistle. I was to understand to keep my course and he was to keep his. He saw my red light and I saw his. I didn't see his green light at any time. He kept coming, and the nearer together we got the plainer our red light appeared and the plainer I could see his. Consequently, for some reason or other, I didn't understand why, but when he answered my one whistle I canted the Yosemite off a little more this way, and if I had not held that course I would have gone on the Swaney plot; but I had ample room, had he kept his course, to have changed my course when I got abreast of him or passing him and fetched my course more this way to have gone clear of him and the Swaney plot; for some reason he came down here and changed his mind and gave two whistles and changed his course right across our bow; then we struck him in the starboard gangway
125 in that direction and cut the Vanderbilt's bow right straight off; there is the position and direction and way that these steamboats came together; as I understand pilot's laws and laws and rules, I was obliged to do that, and I could not help myself; when he went across our bow I undertook to blow the three whistles which the pilot's rules require me to do, and ring four bells to slow, stop, and back, and our being so close together I couldn't do it, as I hadn't time to do it before we came into collision.

Q. What sort of a whistle does the Yosemite carry?

A. She has a very large, coarse whistle; you can hear it a great distance; there was no difficulty in the pilot of the Vanderbilt hearing the first whistle if he had been paying any attention.

Q. How long a blast did you blow?

A. A blast probably that would last three seconds, perhaps.

Q. Your second blast was about the same length?

A. Yes; about the same length.

Q. When you got the single blast from him about how long was that?

A. That was about the same length—two or three seconds.

Q. And when you got his two whistles, how were they?

A. They were short whistles.

Q. And the whistles which you blew, how were they as to length?

A. They were short, as quick as I could continuously blow them.

Q. Were they as long as the ordinary whistles?

A. No, sir; they were not, because I hadn't much time. I undertook to do this thing quick; they were what you call "toots" of your whistle.

Q. Why didn't you give the three?

A. I didn't have time before we came into collision.

Q. Where is your bell-pull that you ring the bells to the engineer?

A. On the side of the pilot-house.

Q. Where is the cord you pull the whistle with?

A. There is no cord at all; it is a whistle-pull rigged on the standard of the wheel; it is midships—in the middle of the pilot-house.

126 Q. Could you pull the two at the same time?

A. No, sir; one is on the side of the pilot-house and the other on the standard of the wheel.

Q. You started to blow the three whistles and dropped that to ring the bell?

A. Yes, sir; to slow, stop, and back immediately.

Q. How far away, in your judgment, was the Charlotte Vanderbilt when you got those two whistles from him?

A. I don't think it was over 200 or 300 feet.

Q. Up to the time you got those two whistles, which one of the colored lights was the Vanderbilt showing?

A. Red light. I saw no change in her lights, none at all, till she came across our bow.

Q. Did you see any change then?

A. I didn't see the green light then; the red light just shut out as the collision took place.

Q. Was there any perceptible difference of time between the sheer of the Vanderbilt across your bow and the two whistles he gave?

A. Very little.

Q. Was it possible when the Vanderbilt made that sheer for you to have changed your course to go — the left?

A. I could not; it was not possible to do it.

Q. Why not?

A. Hadn't time to do it, it being so close together; if the Charlotte Vanderbilt had not made that sheer there would not have been any collision.

Q. How far apart would the vessels pass?

—. Probably from 200 to 300 feet apart, the Vanderbilt being at the west of me on our port side.

Q. How far away do you think the Vanderbilt was at the time when you blew your first whistle to her?

A. I should think she might have been over a mile.

Q. How far away do you think the Vanderbilt was when you blew your second single whistle?

A. Perhaps half a mile.

127 Q. And the exchange of those whistles, as I understand you, would take five to ten seconds?

A. Yes; some few seconds.

Q. There were no other vessels on the river, as I understand it?

A. No, sir; not there. I knew what lights the Yosemite was carrying.

Q. What familiarity have you with such lights as that?

A. They are very familiar to me. I have seen them on the river. During my experience in navigating the Hudson river I have seen them very frequently.

Q. And on what parts of the river?

A. On all parts of the river south of Rondout; sometimes I have seen them above Rondout. I have seen them up as far as Catskill and Hudson.

Q. Was there anything in those lights of the Yosemite which was calculated to mislead a pilot who was accustomed to navigate on the Hudson river?

A. Not any at all.

Q. Was there anything else needed in order to tell a pilot which way the Yosemite was heading than the lights that she had?

A. No, sir; not any.

Q. You were familiar with the steering and sailing rules, weren't you?

A. Yes, sir; I am familiar with all pilot's rules.

Q. What did you understand as to the duty of steam vessels meeting on the river with respect to blowing whistles?

A. I understand when two steamers are meeting each other "head on," or nearly so, it becomes the duty of one of the pilots to make it known to the other pilot with his whistle which side he wants or is going to take of him, which I did in that respect.

Q. What do you understand as to the duty of the other pilot in that case?

A. The other pilot understanding that same fact after I blowing the first whistle to him it gave him to understand I was going to the eastward of him, and when he blew his one whistle he gave me to understand in the same manner that he would keep to the westward of me.

128 Q. What is your understanding from that being done as to which side the vessels, according to the rules, are in duty bound to pass?

A. In the same position that we were in; he keep to the westward of me and I to the eastward of him; pass on what we call the starboard hand.

Q. What is the duty with reference to any changing of whistles after those whistles have been given?

A. If the opposite party wants to make a change he should so signify and do it in time to go clear of the opposite party without running the risk of collision.

Q. What is the duty in reference to the blowing of three whistles?

A. The duty of the man that blows the three whistles—that is,

an alarm whistle to stop his steamboat immediately; the alarm whistles are to be blown in case of danger of collision.

Q. So that in case the Charlotte Vanderbilt having exchanged the single whistle with you, in case the pilot thought he couldn't pass you on that side, what was it his duty to do under the rules?

A. It was his duty to stop and lay still.

Q. And what — reference to the whistles?

A. Blow three whistles. I know what the sailing regulations in the statute require where steam vessels are approaching in such way as to be crossing their courses.

Q. What is that?

A. The vessel having the other on her starboard hand has the right of way and the opposite vessel has to keep out of the way.

Q. Please state that again.

A. Where vessels are crossing the vessel on the starboard side has the right of way; she is to keep her course and the other vessel on the port hand is to keep out of the way of the vessel on the starboard hand.

Q. Which of the two vessels in your case was bound to keep on?

A. I was bound to keep on and the other was to keep out of the way according to the statute law.

129 Q. You were to keep on because you had her on your port hand?

A. Yes, sir. We were on the starboard hand, trying to keep out of her way.

Q. She was bound to keep out of your way and you were bound to keep on?

A. Yes, sir.

Q. Did you comply with those regulations yourself?

A. Yes, sir; I did.

Q. Did the Charlotte Vanderbilt comply with the regulations herself?

A. No, sir; she did not.

Cross-examined by Mr. CANTINE:

The steamer Ontario, of which I speak, was a tow-boat, and so were the steamers Austin and Anna; the Chauncey Vibbard was a passenger-boat—one of the day boats.

Q. How many years since you were pilot on the Chauncey Vibbard?

A. I don't say that I was ever pilot—a fixed pilot on the Chauncey Vibbard. I said I had steered her.

Q. Give the position you had upon the Chauncey Vibbard.

A. I steered her as pilot of her from Four Mile point and Albany.

Q. Wouldn't it be more correct to say that you were the wheelsman to aid the pilot?

A. No, sir; I took charge of her wheel myself below Four Mile point when Royal Betts, your Kingston man, was pilot of her. I steered her from below Four Mile point to Albany. That was not for two whole seasons.

Q. For how much of two seasons?

A. On one occasion only. I was never on her regularly as a pilot.

Q. You steered the Chauncey Vibbard on one occasion from Four Mile point to Albany?

A. Yes, sir; and that was the entire amount of my steering on board the Chauncey Vibbard; that was as much as twelve or fourteen years ago; I have to guess at that. It is twenty-four miles from Four Mile point to Albany.

130 Q. In running the day boats from Four Mile point to Albany do they run nearly as fast as they do after they go below Four Mile point?

A. No, sir.

Q. About what rate of speed do the day boats run north of Four Mile point?

A. Take the average speed it is probably about 15 miles an hour. Their average speed below Four Mile point is about 18, I think. I have been a pilot on the steamer Escort; I think it was either eight or nine years ago last fall. I was pilot on her, I think, six weeks. She ran then from New York to Albany, same as the other night boats; there were two pilots on her, another with me. I was first pilot.

Q. Now, since that time, as I understand you, during the season of navigation, you have been continuously employed on the steamers Ohio, McDonald, Syracuse, America, and Niagara?

A. Since what time?

Q. Since you were pilot on the Escort.

A. No, sir; I was on all of them except the Niagara and America previous to the time I was on the Escort.

Q. Since you were on the Escort what boats have you been pilot of?

A. I haven't been pilot particularly on any boat; I have been master of the steamboat America and Niagara.

Q. That would run back through a period of about six or seven years?

A. Seven years; during that time I carried both what was called a master's and a pilot's license.

Q. While you were master of these boats during these five years, as a matter of fact, did you much of the time take charge of the wheel and steer?

A. Yes, sir; I had a pilot also with me on each boat; the pilot and I took turns so that each steered about half of the time; the America and Niagara were both boats that were in Schuyler's line previous to July, 1882—large, powerful boats; they take these long tows with a hawser astern of the boat between Albany and New York and back again.

131 Q. What is the usual rate of speed of these tow-boats in towing between those two ports?

A. Do you mean the rate when they have tows attached?

Q. Yes.

A. About four miles an hour; that is about the average speed.

When we were with the tide it would be a little more, and when against the tide it would be a little less.

Q. Did these boats run between Albany and New York while you were running them without tows?

A. Yes; we have occasion to do that quite often.

Q. Those are, however, exceptional things, are they not?

A. We didn't do it every day. The object of the tow-boats is not to carry the freight themselves, but to pull other vessels.

Q. You only make the trips either from Albany to New York or back without a tow when you have no tow at one end and go to the other end to get a tow?

A. I will explain if you will allow me. We get to Albany and something happens to one of our other boats. We land our tow and we sometimes get orders to run to New York light to bring a tow from there on account of some other boat being broken down, and we make that passage down without any tow. The same thing happens on the other end of the route. We get in New York and we get orders directly from the office that one of our boats up the river has got into difficulty, has fetched up on the ground or has broken something or is disabled in some way, and we are directed to land our tow and return to Albany light. That is of frequent occurrence.

Q. Do you think it happened as frequently as four times a season?

A. Yes; more times than that.

Q. Put the extreme number of times that you can, in your judgment, fix it at in the last four years, in any one season from the opening to the close of navigation, on the boat that you have been on.

A. I don't know that I could say that it had happened perhaps more than six times in any one season.

Q. In such cases as that about what would be the speed of your boat when you went light?

132 A. From sixteen and seventeen and eighteen miles an hour. I will put that in another light, if you like: We have started from Albany under the bow of the St. John, and she followed us down, and went into New York ahead of her.

Q. How many hours did that make you?

A. We calculate to use up according to the circumstances and the tide and the wind. We go through as quick as ten hours, and sometimes it takes us twelve. If in a great deal of a hurry to return we will go through in ten hours, and we have gone through in nine. The number of miles from Albany to New York by the river is 160. By the railroad it is only 144; that is what I understand. By the river, from Troy to Albany is six miles. By the river, it is from Albany to Catskill point thirty-five miles.

Q. How far do you fix it from Catskill point down to the cross-over, say to the middle of the cross-over, between East and West Camp?

A. About five miles. That would make it about forty miles from Albany to that place.

Q. Take it from Catskill to Esopus light, how far is it?

A. About fifteen miles.

Q. Don't you think you are mistaken about that—from Catskill point to the Esopus Meadows light?

A. I may be a little mistaken. It is about sixty miles from Albany to Kingston, 35 miles from Albany to Catskill point.

Q. You strike the light-house from the mouth of the creek at Saugerties, and then you strike the light-house at the mouth of Rondout creek, and then the light-house at Esopus meadows. With that statement made to you, do you recollect now about the distance from the Catskill point to the Esopus Meadows light?

A. According to that, it would be about thirty miles. The steamboats that I have named that I have been pilot of, as the experience of my life as master and pilot, are steam vessels. I had never been on the yacht Yosemite before I got on her on the after-
133 noon of July 14th. I am reasonably certain as to the time I got aboard her. It is mere recollection. I looked at my own watch at the time we got under way from the anchor off the Battery; that was half past three o'clock. I do not know how long the yacht had laid there. They wanted me to pilot her from New York to Catskill, and I went aboard to do that.

Q. In going up the river, say from the Battery to above Sixty-fifth street, did you run as fast as you did after you got north of there?

A. Yes, sir; we did.

Q. Was there any material change or any change in the speed of your boat at any time from the time you left New York until this accident?

A. Not particularly that I know of, except once; our speed was slackened a little along at Poughkeepsie. I can't say for how long a time.

Q. Would you say as much as half an hour?

A. I should say not as much as that. It was not by reason of meeting any vessels.

Q. Is there any reason you knew of?

A. Yes, sir; Mr. Belden thought something of stopping at Poughkeepsie and laying there until next morning, and we run awhile there slow, in consultation, and he concluded to go on.

Q. Wasn't that time when you were debating whether you would lay for the night and go on in the morning when you were at Cornwall and not Poughkeepsie?

A. No, sir; I am clear about that. The engineer, as I understood it, at the time, had been notified he would stop there and had done something about getting ready to stop, but I don't remember that the yacht was stopped at all, but worked along slow while this consultation was going on. Mr. Belden talked with me about it. I advised him to go right along up, as it was a nice night, and we would get up to Catskill by bed time, or 12 o'clock or so, and that would give him an opportunity to start early in the morning and go to the "Mountain house."

134 Q. Don't you recollect that your estimate then was that you would get to Catskill about 11 o'clock?

A. Well, I don't recollect that exactly.

Q. When you say 12 o'clock, are you anyways certain it was 12 o'clock you mentioned as likely to be there? Are you any more certain it was 12 o'clock you named than 11 o'clock, as the hour you would get there?

A. No, sir; I am not positive upon that point. It was 12 o'clock, I think.

Q. You said there were two lookouts in front of the pilot-house. What were their names?

A. I can't give you the name of either of them, because I was not on the yacht long enough to become familiar with the names of the whole crew. I have no idea now of the names of the two persons. I think I would know one of them if I saw him. One I don't think I would know.

Q. Have you since here at court seen either of the two?

A. Not that I know of.

Q. Have you at any time since the time you came upon this boat seen either of the persons that you recollect that stood in front of the pilot-house acting as lookout?

A. Yes, sir; I have. That was the same season. I have not seen them since the same season. This was in July and I saw the same men again in August, because I came up the river again with the yacht the second time and they were on the yacht then. This second time I came up with the yacht I went up the river as far as Turkey point. That was on the west side of the river, on the north side of Barrytown. That is 108 miles or so by river north of New York. We ran that by day.

Q. Did you run the yacht back again?

A. Yes; as far as Kingston point. No; that is not so. We were on our way that time to Catskill. We came to Poughkeepsie the first afternoon and stopped there to get some company there of Mr. Belden's. That company wasn't ready to come aboard until the next morning.

Q. I don't care for the details. All the running you did while on her at that time, either that day or the next day, was run by daylight?

135 A. Yes, sir; I was trying to explain to you so that you would understand what we did.

Q. Is there any place between New York and the place of this collision where you specially noticed the time it was?

A. Yes, sir.

Q. Was it a clock that was in the pilot-house?

A. No, sir; I went by my own time.

Q. Where was it you noticed that?

A. Do you mean previous to this collision?

Q. Yes, sir.

A. Well, now, I can't say as to that; I can give you one thing, we were at Newburgh just about sunset; I can explain to you why I noticed that.

Q. Was there any time when you looked at your watch and noticed the time after you left New York till after the collision?

A. I can't swear positively where I looked at my watch in particular to see what time it was; I can't name any point between New York and this collision; immediately after the collision I looked at my watch to see the time; I think it was a little after 10 o'clock then; not much.

Q. Would you put it five or ten minutes?

A. Immediately after the collision.

Q. How many minutes, according to your recollection, do you put it after 10 o'clock?

A. Probably it might have been 10 or 15 minutes after; I wouldn't swear positively to the minutes.

Q. When you looked at the watch after the life-boat had brought from the wreck of the Vanderbilt the crew and put them on your boat, was it before or after that?

A. I think it was while the life-boats were away after the crew of the Vanderbilt that I looked.

Q. How long do you suppose you were lying at the place of this collision until you got started again on you- trip to Catskill?

A. We might possibly have been there twenty minutes to half an hour, perhaps.

136 Q. Do you recollect of looking at the time when you got to Catskill to see how late it was?

A. Yes, sir.

Q. What was the time when you got there?

A. I can't give the exact minutes, but it was between 12 and half past 12 o'clock.

Q. At the time you looked at your watch, was it after you had cast your anchor or before?

A. Just at the time.

Q. Had you been any time delayed in "rounding to" at Catskill and getting ready to cast anchor?

A. No, sir; not at all; we went right up and let our anchor go; we were headed up the river, and when the anchor was down swung around stern up the river.

Q. Did you make any record of these times of day or do you give them from recollection?

A. From recollection.

Q. Do you want to be at all positive about the times you have given?

A. Yes, sir; as I have stated.

Q. You said you saw Mr. Belden in front of the pilot-house. About what time did he come in front of the pilot-house?

A. He was there more or less all the way up; he would leave there and go aft to his family and immediately or very soon afterward he would come back forward; he was looking about the river; he had a friend with him; Mr. Haines, I believe; I saw Mr. Haines forward with Mr. Belden.

Q. My question was if, when you saw Mr. Belden there, if Mr. Haines was with him.

A. Not all the time.

Q. Can you name any person other than the two lookouts—Mr.

Belden and Mr. Haines—that was forward of your pilot-house; any of the officers or crew?

A. I saw the mate (Mr. Hinckley) there, Mr. Haines, and Mr. Belden and the two lookouts; that's all I can now recollect.

Q. Just previous to this collision, was Mr. Hinckley there?

A. He was there; he was not there at the time of the collision.

137 Q. Do you know where he was?

A. All I know about that is what he tells me.

Q. I have heard the rumor that he was in bed, and that he came out on the deck in his shirt-tail.

A. I saw nothing of the kind.

Q. How long before the accident had Mr. Hinckley been absent from in front of the pilot-house?

A. Previous to that accident I saw him, I think, not more than five minutes. I was talking with him. I do not know which way he went then.

Q. Did you talk any with the man who was acting as one of the lookouts as to what his business was or whether he was a pilot or common seaman or an officer of the boat?

A. One of the lookouts on the forward deck termed himself as being a "Hellgate pilot."

Q. By my mentioning the name of John Minyard, does that call to mind whether that is the man?

A. Well, I don't remember; I wouldn't be certain; not being acquainted with the man, I don't remember the name. I wouldn't know if I heard it.

Q. Do you know who was the regular pilot of the Yosemite?

A. There was no such officer as that on the boat that I knew of or heard of.

Q. Who do you understand was the regular pilot on board of the yacht?

A. As I understand, the captain was his own pilot; that was the only pilot attached to the boat as I understood it.

Q. About what time of night on the way up did they change watch?

A. I don't know as there was any watch changed at all; so far as my knowledge extends the whole crew were on watch from the time we left New York until we came to anchor at Catskill. I think there had been no change whatever.

Q. You would be pretty apt to recollect the two men you saw standing forward of you, as to whether they had been standing there all the time from New York up to the time of the collision?

138 A. Yes, sir; they were about the deck so far as my recollection serves me; the only time I was absent from there was when I took supper; I took supper about 6 o'clock; was occupied with that possibly 15 minutes; I give that as my judgment now; during the time I was at supper the boat did not stop; Capt. Eldridge was in charge of steering her at that time.

Q. On all the steam vessels you have ever been on before this one how was their steering gear arranged?

A. All the steamboats I have ever been on were what we call regular river-boat steering gears; if I wanted my boat to turn to the right I would throw my wheel to the left, and if I wanted my bow to go to the left I would throw my wheel to the right.

Q. And in steering those kinds of boats, if you received from your lookout the salute to "port," would you throw your wheel to the port?

A. I don't ever receive such a salute from the lookout.

Q. Then if you yourself gave an order to "port" would that mean to port your wheel?

A. That would be owing altogether as to how the steering gear was rigged.

Q. I mean of this kind you have been on.

A. Oh, yes.

Q. And if you gave the order to port that would mean that the bow of the boat would go to the starboard?

A. Yes; on our river steamers; if I wanted the boat to go to port I would give an order to the wheelsman to "starboard;" this wheel upon this steam-yacht was rigged right the reverse; so when I wanted the bow to go to the right hand I threw the wheel to the right hand.

Q. So if an order was given either by you or somebody else to "starboard" and you did starboard her, it would bring about the reverse result from what it would upon a river-rigged boat?

A. Yes, sir.

Q. Had you had any experience before this time in handling a wheel that was rigged as this was?

139 A. No steamboats; I had on schooners; thirty-five years ago I was in sailing vessels, before I went to steamboating, seven years.

Q. Were those sail-vessels that you were on during those seven years all rigged that way?

A. No, sir; not all of them.

Q. What proportion of the seven years were you on boats that were rigged that way?

A. Three years. I was sailing on the Hudson river. I mean to say that sailing boats on the Hudson river are rigged that way. It is not an unusual thing on the Hudson river for the sailing vessels to be so rigged.

Q. In front of your pilot-house is there any obstruction between that and the portion of the deck that extends up to the stem of the boat?

A. There is a mast in front of the pilot-house. Our foremast stands forward of our pilot-house. Her pilot-house is back of the stem, about 15 feet. Those lookouts were standing forward of this mast.

Q. Do you know whether there was a structure like a house between the pilot-house and the stem of the boat?

A. Not any at all. Nothing comes high enough to obstruct the view from the pilot-house. There is a "companionway" to go

down into the forward part of the boat, forward of the pilot-house, but it is low down.

Q. How high does that extend above the deck?

A. Probably about three feet.

Q. How high was the pilot-house above the deck of the boat?

A. Do you mean the top of the pilot-house?

Q. No; floor.

A. About a foot above the level of the deck.

Q. And this deck that you speak of was the upper deck of the boat and went way up to the stem of the boat?

A. The deck I stood on was her main deck. There is no deck above that. That is an entire covered deck, so that the construction of that deck by way of decks and pilot-house is entirely different from the construction of North-river steamboats. That deck would correspond with the main deck of a North-river
140 steamboat. The sails were furled when I went on at New York; they were not at any time unfurled after I left New York until I got to Catskill.

Q. Explain what you mean by "furling the sails."

A. The sail is furled. The square sail connected with this yard across the foremast is furled right in a space probably that width (indicating) midship on the yard in front of the foremast; done up there.

Q. Sort of square chunk?

A. No, sir; not exactly; folded on the yard and lashings passed around it to keep the wind from blowing it away.

Q. How many feet square is it when it is folded up?

A. Probably might have taken up four feet in length in the yard; it might look across it as large as a barrel or larger; perhaps a little larger than a barrel.

Q. For the distance of how many feet in length?

A. Four feet.

Q. What other sails besides that were furled?

A. She had a sail furled on the after side of her foremast. There is a "gaff" running from the foremast, and these sails were "bent" in position to use. They were furled right in on the after side of the mast. They were rolled up as tight as they could be against the after side of the mast and tied up.

Q. Were there any other sails besides those two sails that were furled?

A. Yes; there was a "jib" forward.

Q. What was this furled to?

A. That was furled and dropped right down on the deck under the stay—up forward right inside of the rail, which would make that the same as though this is the bow of the ship, and this jib is furled and laid inside here.

Q. It laid down on the deck and did not extend up as far as the rail?

A. No, sir.

Q. Were there any sails whatever upon her after masts that were furled?

A. I am not positive of that, but I think there was sail on
141 the after mast—I am positive there was—same as on the forward mast, and it was furled and stowed away in the same manner.

Q. Is that all you recollect about the condition of the sails of the boat?

A. Yes; I think so.

Q. You speak of meeting certain steamboats that night; among the rest, the Newburgh boats. Don't you know that the steamboats that run from Newburgh to New York do not leave Newburgh till about nine o'clock at night?

A. Yes; I might have been mistaken in that; I wouldn't be positive as to that. I do not know where I met the Poughkeepsie boats. I know that the steamboats that run from Poughkeepsie go directly across from Poughkeepsie and land at Highland, and then run down the west side of the river and land at Milton and Marlboro' and from there on to Newburgh. I don't recollect where I met the Coxsackie propeller; I think I met her before this collision. I don't recollect where I met the Kingston boat.

Q. Do you recollect whether it was above or below Poughkeepsie?

A. I can't say; I don't remember that.

Q. Are you certain of meeting her, or may she not have laid at the Milton or Marlboro' docks about the time you passed her?

A. I couldn't say; I am not positive about that.

Q. According to your general recollection in travelling on the river in what is known as the "berry season," don't you know that the Kingston boats get down to Milton about half past seven or eight o'clock and are delayed in that neighborhood at Milton and Marlboro' about an hour in taking on freight?

A. I know they make those landings, but I can't say how long they laid. The boats I have named do not embrace all the passenger steamboats that run down the river at night that I would meet in coming up. I met the Troy line boat a little below Oak Hill after the collision. That is pretty near Catskill point—probably half a mile below Catskill point.

142 Q. Are you at all certain that at the time you got the two whistles from the Vanderbilt that you were not more than 200 or 300 feet away from her?

A. I feel very certain we could not have been more than that. I was sworn before the steamboat inspectors about this collision.

Q. What is your recollection of the distance you swore to on that investigation when you first heard the two whistles from the Vanderbilt?

A. I couldn't remember that just now.

Q. Do you recellect that you swore "When the Vanderbilt was within 500 feet of us she gave us two whistles and changed her course to go to the eastward of us"?

A. Possibly that might have been so.

Q. Do you recollect that there were two different times that you were sworn—in Albany once and once in New York?

A. I never was sworn in Albany at all.

Q. Do you recollect swearing on two different occasions, making it once that you were sworn before Leonard Brainard and Charles S. Harvey, U. S. local inspectors?

A. I never was sworn before Harvey & Brainard, U. S. inspectors, to my recollection. I went there and made a statement before them; I don't think it was under oath.

Q. I have what purports to be a certified copy of a statement under oath, which purports to have been signed by you and subscribed by them and purports to be sworn to on the 17th of August, 1882. You recollect that you were sworn at New York?

A. Yes, sir.

Q. Do you recollect swearing at the time you were at New York before them as follows: "When we were within 500 or 600 feet of each other, I should judge, the Vanderbilt took a rank sheer right across our bow and showed her green light. He blowed two whistles"? Do you recollect testifying to that?

A. I recollect testifying to that so far as this—that she took a rank sheer, as I have testified here, across our bow and
143 blowed the two whistles. I don't remember of testifying to seeing the green light.

Q. Do you recollect swearing before the inspectors as to the distance they were apart when the two whistles were blown?

A. There is no doubt in my mind that I swore to the distance at that time. I might possibly have given the distance 400 or 500 feet; I don't remember that I gave it 500 or 600 feet.

Q. Wasn't your recollection as clear then as to judgment of what took place as it is now and your judgment then as good as it is now?

A. The only thing I have to say in that respect was on account of the speed of the boats.

Q. You don't answer my question. Was not your recollection of what you had seen just before and at the time of the collision and the distances apart at the time the whistles were blown as good then as it is now?

A. No, sir; I think we were nearer together now than I did then. It was a thing instantaneous and quick.

Q. Wasn't your recollection of what you saw at the time of the collision and just previous to it and the distances that the vessels were apart at the time the whistles were given, especially when the two whistles were given, as good then as it is now?

A. Yes, sir.

Q. In running down the river what course do you run in passing from Rhinebeck to the Esopus light?

A. From Rhinebeck, starting from about the middle of the river abreast of Rhinebeck, we would run a south course. That would head us about on the Knickerbocker ice-house. We would go within 500 feet of the west shore before changing our course; we would be down then about opposite or a little below the upper ice-house; we would then change our course south-southeast to clear the Esopus light-house; would head on the east land very near in

the direction of Dinsmore's house; probably a little to the westward of it.

144 Q. Haven't you known very frequently that course was from about the middle of the river opposite Rhinebeck to be run in three courses, one course headed on the upper ice-house, and when you are out near the middle of the channel of the river you would be headed on a course that would be somewhat bearing on Esopus light or a little west of the light until you got nearly opposite the lower ice-house, and then go off on that course it would head you on Dinsmore's?

A. No, sir; I never run that course.

Q. In running from Rhinebeck and heading on the upper ice-house can you give the points of the compass?

A. About due south. The course by the compass would be when heading on Dinsmore's sou'-sou'east.

Q. How many points do you make that east of south?

A. Two points. I am not myself an expert in "boxing the compass." I wouldn't want to be called upon to "box the compass."

Q. You don't think it necessary for a North River pilot to be versed sufficiently to be skilled in "boxing the compass"?

A. No, sir; not on the Hudson river.

Q. Had you ever run by the compass on the Hudson river?

A. Not a great deal; sometimes we do.

Q. Are not these times confined substantially to times when you are caught in a fog?

A. Yes, sir; when you come to get into the upper Hudson our river is too crooked and narrow to run by compass in thick weather. You can't do it. It is impossible.

Q. You deem it wholly unsafe to do it?

A. Yes; certainly. I would make the distance from Esopus light to the upper ice-house about a mile and a half.

Q. How far are the upper and lower ice-houses apart?

A. Well, I really don't know; I don't know that I ever noticed particularly how far apart they are.

145 Q. Are they as much as a quarter of a mile?

A. No, sir; I should think not.

Q. If I understood you right, after you made your turn at the Esopus light or was about to make a turn you then observed the light of the Vanderbilt, and she was then apparently upon her course, which would be head upon the upper ice-house?

A. I said when we were about a quarter of a mile above the Esopus light-house she was still on the course, which would be heading on the upper ice-house. From the way she was headed that would necessarily show her red and obscure her green light. It was at that time that I blew the first whistle, which I said was not answered. The wind that night was north, not very strong.

Q. What do you understand is your duty if you blow the whistle to another boat and it is not answered?

A. I understand I wait a proper time to get an answer from them, and then I blow again.

Q. Will you please define to this jury what a "proper time" is?

A. The proper time might be to get an answer back from the other boat probably five or six seconds. After I had waited that length of time, as I now judge, I blew another whistle.

Q. Was not your judgment that when you failed to get an answer to your first whistle that she hadn't heard your whistle?

A. She might possibly not; I couldn't say; they didn't answer anyway.

Q. Wasn't it reasonable to suppose with the distance you were and not getting an answer back that she had not heard your whistle?

A. I have no right to suppose that. The Yosemite had a very loud whistle that could be heard for a long distance.

Q. But the wind was blowing to the extent of a breeze, and it would amount to an obstruction to hearing north. You couldn't hear as far north as you could south?

A. No, sir.

Q. You blew the next whistle and you immediately got an answer?

146 A. I got an answer soon after. It was as rapidly as I usually get an answer from another boat.

Q. What do you say as to the length of time between the time that the Vanderbilt blew this single whistle in answer to your single whistle when she gave you two whistles?

A. It might possibly be forty seconds; in that vicinity.

Q. You are certain in your mind that it wasn't given almost immediately after?

A. Certainly was not.

Q. How long do you estimate the time of hearing the two whistles from the Vanderbilt when you blew the two whistles on your boat?

A. As soon as it was possible to do it.

Q. How long was it after you had blown these two whistles when you pulled the bell pull?

A. It was immediately. I gave four bells to slow, stop, and back just as fast as I could ring them; I know that.

Q. Are you as certain that the four bells were pulled consecutively as fast as you could give them as you are certain of the fact the two whistles you received from the Vanderbilt were as long as 40 seconds after the one whistle?

A. It was not 40 seconds. My judgment is that it was 40 seconds between the one whistle and the two whistles from the Vanderbilt. I am as certain of my recollection as to that as I am of my recollection that I pulled those four bells as fast as I could pull them.

Q. As a matter of fact, in pulling these bells didn't you pull one bell to slow, and then one to stop, and then a period of several seconds intervened before you pulled the bells to back?

A. No, sir.

Q. Had you pulled the bells to back before the two boats had come in contact?

A. I think they came in contact just the same time. The whistles

and bells were pulled and the crash seemed to be almost instantaneous.

147 Q. Had the speed of your boat materially slackened or slackened at all at the time you actually had this collision?

A. I think not.

Q. Wouldn't it be rather inferential for the jury and myself and the court to conclude that if these two whistles from your boat and your four bells were pulled about the same time and the crash came almost as if it was an instantaneous thing that the speed of the boat had not at all slackened at the time they struck?

A. I don't think it had.

Q. How far beyond the Vanderbilt had you run before your boat was stopped?

A. I didn't leave the pilot-house at all. I stayed right at my post at the wheel. I can't say how far we were above the Vanderbilt before that steamboat was stopped dead in the water and going back, but we went until she did stop and kept the engine backing until we backed down nearly to the Vanderbilt again.

Q. Can you give a judgment of about how far you ran beyond her before you stopped?

A. I couldn't, really. I didn't go out of the pilot-house and I didn't see the Vanderbilt after we passed through and by her until we backed almost to her, and then we dropped the boats in the water and took in the crew. The life-boats were not actually lowered until the Yosemite lay dead in the water.

Q. In running from the Esopus light north and to get around Rhinebeck what is the usual course steamboats run?

A. The usual course that steamboats run bound up the river (that is, my course) is to come up if there is nothing in the way the same as that night, about the middle of the river, and steer as near a straight course as I can outside of Rhinebeck bluff, clearing the Swaney plat. We don't head any ourselves in going up the river on the Knickerbocker Ice Company's houses on the shore—not necessarily. I don't more generally head about for the Rondout light. It is just west of the bluff. That would clear us of the Swaney plat.

148 That is about a north-northwest course by compass. That would be about two points west of north; just about as many points to west of north as the other course would be east of south.

Q. Then the boat coming down the river on that course and a boat going up the river on the course you have named would make the two boats "head on" if they were at the same point of distance from the shore?

A. If there are two steamboats in the one place they would be "head on," but place them half a mile apart they wouldn't be. That is further to the northward and southward coming in opposite directions toward each other.

Q. You say that a vessel coming up here headed two points west of north and a vessel going down here headed two points east of south, no matter how far they were apart, wouldn't they be running on the same line?

A. Yes; if this steamboat had come down far enough to shape her course they would be.

Q. So long as this steamer was coming "head on" to the ice-house they wouldn't be "head on"?

A. No, sir. Understand me. As I said before, this is wrong. That is too far outside of the Rhinebeck bluff.

Q. When a vessel was coming on this course down here and the other vessel was coming on this course up here, that vessel down there wouldn't be on the starboard side of this vessel, would she?

A. Certainly she would. She wouldn't be further off to the east. As I said before, this vessel coming here showed me nothing but her red light.

Q. As long as she showed you her red light wasn't you on her port rather than on her starboard side?

A. I was to the starboard side of her. The east of her would be to her port, certainly.

Q. Then as long as she was coming down here towards the ice-house and showed her red light to her you would be on the port side of the Vanderbilt?

A. Yes, sir. She was heading off here, and, of course, that covered up her green light and I couldn't see it at all.

149 Q. When you would be going up on that same course and until she had changed her course from that which headed on the upper ice-house she could see your red light and could not see your green light?

A. She couldn't see our green light at all, but she could see our red light.

Q. After she changed her course from heading on the upper ice-house to either heading on the Esopus light or down on Dinsmore's light, what light would you then see, you going up on this course just about inside that bluff and she coming down here heading on Dinsmore's?

A. We couldn't see her green light, but we could see her red light. She was far enough to the westward of us and we far enough off to the eastward that she couldn't possibly show us her green light.

Q. The reply that you couldn't see her green light and could see her red light in that position is because you claim you were east of the centre of the river and she was west of the centre of the river?

A. Yes, sir; we were a little to the east of the centre of the river and she was a little to the west of the centre of the river; in my judgment, we were east of the centre of the channel of the river, but only a little.

Q. How much do you think the Vanderbilt was west of the centre of the channel of the river?

A. Not a great ways; neither of us was very far from the channel of the river.

Q. When she gave the answer to your first whistle had the Vanderbilt changed her course from that which headed on the upper ice-house to the Esopus light-house or Dinsmore's?

A. She wouldn't change her course until she got nearly down to the lower ice-house, and then she might haul down the river a little, but I couldn't tell how much she had changed her course, because she certainly didn't change it enough so I could see her green light; she kept her red light in view to me all the while.

Q. In your judgment as a navigator, from the distance as
150 it appeared to you, do you think you received the first whistle and answer to your whistle; had she changed her course from that course which would head on the upper ice-house?

A. I don't know that she did; possibly she might have changed it a little and I not noticed it.

Q. Did you take any notice that night to locate opposite what point on the west shore they came in?

A. A little below the ice-houses; it was a strong flood tide; not so much as three hundred or four hundred yards.

Q. How would you put it in reference to the middle of the channel?

A. Well, sir, when we came in collision we were a very little to the east of the middle of the channel with the Yosemite. That is as near as I could calculate; that is my judgment.

Q. You spoke of having changed your course a little. How much did you change your course, if any, after any whistles were given and up to the time of the collision?

A. I say after I got his answer to my whistle I then changed my course a trifle more to the eastward. I could not give it, how much, by the compass; it was but very little. Then I steadied her on that course; from that time up to the collision I did not change my course at all; went steady on that course. I understand from the sailing rules, as well as the law, that whenever I see that there is any likelihood of a collision it is my duty to stop and back.

Q. That that is just as imperative a duty according to the sailing rules upon you as it is when you get an answer to a whistle from you that you should turn to the right?

A. No, sir; when I got that answer from him I changed my course a little to the eastward still more. He gave me to understand when he answered my whistle he would keep that course westward of me, and therefore I was satisfied I was on my direct course for us to go clear. No necessity for coming anywheres near each other, and we would not had he kept his course; but, as I said before, when he got down within a very short distance of us
151 he gave me two blasts with his whistle and immediately crossed the bow. That gave me no time to do anything, so far as changing the course of the Yosemite, he was so close on to me. I undertook to blow my three whistles, which the *the* third pilot rule required me to do. There was nothing for me to do except that. I couldn't change the course of the Yosemite to avoid that collision.

Q. If from the time he gave you two whistles he could give his boat a rank sheer so that he could turn his boat so that she went nearly directly across the river, why couldn't you in the same length of

time give your boat a rank sheer to the west so you could have turned your boat almost straight across the river to the west?

A. He had the percentage of me on blowing the whistles first. He had that much start of me. Afterwards I had to do the next thing; then I had to answer his whistles, and in doing that, of course, he had that percentage of me and got his boat in a position across the river, which I had no time to do. That is my explanation. I had some one in the pilot-houses with me, Capt. Eldridge. He was at the wheel, standing on the starboard side of it, and myself in charge of the wheel on the port side.

Q. What was there to prevent you from stating to him, "Starboard the wheel," and you pull the whistles at the same time?

A. There was no time for any such conversation.

Q. Would it take a second to say "Starboard the wheel" and you pull the whistle cord?

A. I claim we had no time for conversation. The thing was almost instantaneous, it was imminent.

Q. In that almost instantaneous time, according to your own statement, he did give his boat such a rank sheer that he almost changed his course from south to east?

A. No, sir; I say he blew his whistles and gave his boat the sheer at almost the same time, and he had that percentage of me that my boat at this time was approaching him so fast, and he coming
152 in the opposite direction, that it gave me no time at all whatever to answer his whistles or to blow my alarm whistle and get my steamer in any other position.

Q. Will you give your estimate of the length of time that it would take you to blow two short whistles in answer to his two?

A. Well, it would take three whistles. You wouldn't want to do it so fast that you wouldn't get any distinction between the two; that would make one blast of the whistle.

Q. You give one jerk and it takes about an instant of time between to break the sound, doesn't it?

A. Yes; that's what I say; it might take two or three seconds.

Q. Did you find in navigating this vessel up the river that she was very susceptible to her rudder and steered very easy?

A. Good steering boat.

Q. Did you find in navigating her up the river that she stopped quick?

A. No, sir; she does not stop quick. In the first place, she is too heavy, and there is no propeller afloat whose speed you can stop as quick as a side-wheel boat. Her wheel don't have that chance to get hold of the water that the wheel of a side-wheel boat does. You can't stop any propeller boat as quick as you can a side-wheel, and that boat being very easy, lying in the water heavy, she would hold her way longer than a side-wheel boat.

Q. Do you recollect about what draft of water she had?

A. They told me she drew thirteen feet.

Q. Wouldn't her propeller extend pretty near down to the line of her keel?

A. I can't say. I can't speak of any knowledge of my own.

Possibly it might have gone down within six inches, for all I know. As a boatman of experience, I know that the wheels of a propeller sink nearly as low in the water as the bottom of the keel.

Q. Wouldn't her propeller wheel, being such a propeller of heavy draft of water, have great power to act at once?

A. Not as much power to act in backing as in going ahead, because that wheel is directly behind the stern post of the steam-
153 boat and the hull of the steamer outside of her. She has no solid water in backing, but in going ahead it is the other way; consequently there is no propeller that you can back as well as go ahead. Set a propeller going back you can't get one-third of the speed backwards that you can going ahead; the wheel don't get hold of solid water.

Q. Do you think you can run a side-wheel boat and run them stern first with the same speed as ahead?

A. You can after you get them started; let them lay dead in the water and you can start them backwards as fast as you can ahead.

Q. Do you mean to say that the construction of a vessel is such that the stern of the boat does not present much more of a resistance to the water than the bow of the boat?

A. I will explain to you without further comment: A ferry-boat has a rudder on each end of it and will go as fast one way as the other; so will a side-wheel boat; lots of steamboats are built the same way—just as lean one way as the other.

Q. Can you name a side-wheel steamboat that is a regular passenger and a freight boat on the Hudson river, outside of a ferry-boat, that is as sharp at the stern as at the bow?

A. Yes, sir; and I can give you some that are leaner aft than forward; the Cayuga is fuller forward than she is aft; the steamer Ontario is fuller forward than aft; they are sharp-sterned boats—both of them are tow-boats.

Q. My question was passenger and freight boats.

A. Then I will give you one here: There is the D. R. Martin, in New York; she is a passenger and freight boat; she will go as fast one way as the other.

Q. Wasn't she built for and didn't she run as a ferry-boat from New York to the north shore of Staten island?

A. Yes, sir; she was not built for a ferry-boat, but built for a passenger-boat, but after she had run on the ferry a length of time they never altered the shape of the boat, but put a rudder
154 on the aft end of her, hung a rudder on her stern post, and run the boat as well one way as the other.

Q. She had a rudder at each end?

A. Yes, sir; but she was not constructed so in the first place and not until she had run there a long time.

Q. Was this Yosemite as sharp at her stern as at her bow?

A. No, sir; I think not.

Q. Do you know whether the Vanderbilt was as sharp at her stern as at her bow?

A. I can't say positively. I recollect swearing before the steam-

boat inspectors when I was first sworn that I had ported my wheel after the one whistle on the yacht. I recollect at the subsequent time when I was sworn that I swore that I had made a mistake and had ported my helm—that is, by turning the wheel to the starboard.

Q. How long was it between the two times that these two swearings were made by you?

A. My testimony was taken before the local inspectors in New York, and that testimony was sent to the inspectors at Albany. Harvey and Brainard sent for me to come into the office and I went in and explained the matter to them and I told Mr. Harvey there and showed him this mistake.

Q. How long was the interval between the times you made the different statements?

A. I really can't say. I think it was within a week's time.

Q. In point of time how long, about, was it from the time when you blew the first whistle which was not answered to the time you blew the second single whistle which was answered?

A. I think five or six minutes. I think that is what I answered before, if I remember right.

Q. Do you recollect of swearing upon that point before the steamboat inspectors that that time was about a minute to a minute and a half?

A. Possibly I might.

Q. I find this: "Very soon after I blowed one whistle; that was not answered: in about a minute and a half I blowed another whistle; that was answered with one whistle." Do you recollect so testifying?

A. I think I did.

155 Q. Do you know about the speed that your boat was making at the time you were coming up past Esopus light and up to the time of the collision?

A. I think we were making about 11 or 12 miles an hour.

Q. Were you running about as fast then as you did on that part of the journey from the place of the collision up to Catskill?

—. ——.

Q. Did you run at about the same rate of speed from the place of the collision after you got started from there to Catskill as just preceding the collision?

A. I think we run a little faster after the collision, when we got above there; I don't know how many revolutions of the wheel.

Q. I assume that if the wheel made about the same number of revolutions that her speed would be about the same?

A. It naturally would be.

Q. Was there anybody in the pilot-house besides Captain Eldridge from the time you left New York up to the time of the accident?

A. Yes. Mr. Hinckley, the mate, had been there; the quartermaster—I can't give his name; Mr. Belden and Mr. Haines were in there, and there might have been more. I can't tell you all that were in there.

Q. Was any one in the pilot-house besides you and the captain of

the boat after you passed Poughkeepsie and up to the time of the collision?

A. Yes, sir. Mr. Belden was there, and Mr. Haines and Mr. Hinckley was there after that. They were in and out frequently.

Q. Had anybody besides you and Mr. Eldridge been in the pilot-house between the time you rounded Esopus light and the time of the collision?

A. I think not.

Q. I understood you to say that it was the duty of the Charlotte Vanderbilt to have given three alarm whistles and to have slowed down, stopped, and backed.

A. I haven't said so. I have not said anything upon that subject. I didn't say that in substance in answer to the questions put to me about the rules.

156 Q. In your experience as a boatman do you think it was the duty of the pilot of the Vanderbilt to have slowed, stopped, and backed?

A. I can't answer that question as I know of. The question was not put to me in the shape that I feel at liberty to answer to it.

Q. Don't think it was your duty to have slowed, stopped, and backed as much as it was the duty of Mr. Whittaker to have slowed, stopped, and backed?

A. No, sir.

Q. Will you give the reason why not?

A. I had nothing to slow, stop, and back for until he crossed my bow.

Q. Up to the point of time did he have anything to slow, stop, and back for?

A. Not if he had kept his course.

Q. Then your idea is that neither boat had any duty to perform from the position which you were in — the river till after the time that Mr. Whittaker gave the two blasts of his whistle to you?

A. No, sir.

Q. In navigation when you get one blast of the whistle that is answered that means that each boat is going to the right?

A. Yes, sir.

Q. When you get two blasts doesn't that mean that each is going to the left?

A. Yes, sir; if they are "head on."

Q. Suppose they are not "head on" and you received two blasts from the other boat and answer the two blasts, don't that mean that each shall go to the left?

A. Not if they are in position that they can't be clear.

Q. What do two blasts mean?

A. If you have two steamboats approaching each other from opposite directions "head on" or nearly so, the first steamer that blows the two whistles has the right——

Q. What do the two blasts mean?

A. It means to pass each other on the opposite direction. That means on the left-hand side.

Q. If you gave another steamer two blasts and you are answered with two blasts, don't you understand from that that they have given you that signal and you have acquiesced in it?

157

A. Yes, sir.

Redirect examination by Mr. BENEDICT:

Q. You were asked by counsel on the other side as to the second trip that you were on the Yosemite up the river, and you spoke of stopping at Poughkeepsie. Do you remember when you arrived at Poughkeepsie on that occasion?

A. I think it was after dark. Under the laws and rules the lights of vessels navigating the river are to be set at sundown. The lights of the Yosemite were set upon that occasion. I am familiar with the range lights.

Q. Where is the high range light always carried?

A. The aft light is carried on the flag-staff at the aft end of the steamboat.

Q. Rigged as the Yosemite was, if she had had a range light at the aft end of her, could it have been seen by vessels approaching?

A. Not unless they were a good deal off on the side.

Q. But vessels meeting "head to head" they couldn't see it?

A. No, sir; the masts would cover up the lights.

Q. Counsel asked you if upon your first examination before the inspectors you didn't state that you hove your wheel a-port. Did you answer that you said so? Was this your statement upon that occasion: "I hove my wheel a-port and canted the Yosemite a little more in shore"?

A. Yes, sir.

Q. Haven't you previously said in a previous answer that you were steering just outside the point called Rhinebeck bluff on the east shore?

A. Yes, sir; when I said I "canted the Yosemite a little more in shore," I meant I turned the head of the vessel to the eastward. When I said I "hove my wheel a-port," I meant that at the same time to cant my vessel to the eastward; more on the east shore than I had been previous. As a matter of fact the wheel of the Yosemite does turn the other way.

Q. But the motion you made with your wheel and have described by this language produced what effect?

158

A. To sheer her more to the eastward on the east shore. When I gave this evidence I didn't think at the time of the arrangement of the steering gear, but I made myself familiar with that steering gear as quick as I went aboard of her, and understood it, except when I spoke of it at that time I didn't think of the different arrangement of the steering gear. The first time I saw Harvey and Brainard in their office I tried to correct that and they wouldn't allow it. I did not see the boats of the Yosemite lowered that night. I don't know when they were lowered, only what the crew said. I didn't go out of the pilot-house. If the Charlotte Vander-

bilt had been coming down the river in the usual course she would have shown to me as she came down heading for the ice-house her red light.

Q. When she made the change in the ordinary course to go down, heading for Dinsmore's, would she make change enough to show you any other light than the red light?

A. No, sir.

Q. And unless she did make change enough to show you the green light could you at that time tell whether they changed her course there or not?

A. No, sir.

Q. In the ordinary manner of navigating how far from the west shore would the Vanderbilt have been at the time she made that change?

A. About 500 feet; that is the proper distance for a pilot to run in that position.

Q. After you steadied your wheel headed in for Rhinebeck bluff a little did you change your wheel before the collision?

A. No, sir.

Q. I understood you to say that you might have said before the inspectors that there was a minute and a half between the two single whistles that you blew.

A. Yes, sir; I think so. I do not think that is correct now, because it wasn't that time. I thought at the time that the time was longer than it was really, and in consideration of that fact I made up my mind that I was mistaken in the time and that the time
159 was less than that. It is a pretty difficult thing to state exactly the length of time between two such occurrences as that.

Q. You said to counsel you couldn't answer whether it was the duty of the Vanderbilt to slow and back, as he put it to you. Now, supposing the pilot of the Vanderbilt, on hearing your one whistle and having answered it with one, had then come to the conclusion that it wouldn't be safe for him to attempt to pass to the right, what would have been his duty in that case as to stopping and backing?

A. In that case it would have been his duty to have stopped entirely and laid still.

Q. What whistles would it have been his duty to give if that was the situation?

A. Three whistles.

Q. Counsel asked you as to what the meaning of two blasts of the whistle was, exchanged between two vessels. Is there any difference in that as to the distance apart the two vessels are? Under ordinary circumstance-, the whistles are required to be exchanged at what distance?

A. From half to three-quarters of a mile apart. In that case that would mean that each was to pass to the left.

Q. But supposing the vessels have approached within 100 feet before the pilot gives the two whistles, what then does it mean—does it mean then that they will agree to pass to the left?

A. No, sir.

Q. Under the circumstances under which you gave these two short blasts of the whistles, would a competent pilot have understood that you were acquiescing in a proposition to go to the left?

A. No, sir.

Q. You have had more experience in navigating steamers in the night than I have had, but have you had any occasion in your experience before where a man after having exchanged single whistles with you has blown two whistles and undertaken to go the other way?

A. No, sir; never in my experience as a pilot upon the river. That is the first and only one I ever had.

Recross-examination by Mr. CANTINE:

160 Q. Haven't you ever in your life after single whistles have been exchanged received two whistles in answer to two whistles?

A. Never in navigating up and down the river. Sometimes an occasion of that kind occurs in the harbor of New York, where you are crossing and recrossing and where they are all knotted up in all shapes. Then we have to be governed by circumstances.

Q. In the harbor of New York you have known that after such whistles have been given (a single whistle) and then changed to two whistles and acted upon?

A. Yes, sir.

Q. When two whistles are given and two are answered, does that mean that steamboats shall stop and back.

A. Not necessarily, but according to the position they are in and the circumstances—not unless it is to avoid a collision.

Q. If that is done you think a collision is imminent and stop and back?

A. Yes, sir; but ordinarily it does not mean that—not under ordinary circumstances.

Q. You speak of having frequently seen vessels on the Hudson river with a mast-head light and no bow light. How frequently, in your opinion, have you seen such vessels north of Spuyten Duyvil in the night-time?

A. We see them, or have seen them for the last four or five years, until it has become so general with these sea-going pleasure yachts up and down in the summer season. Since that it has been of quite frequent occurrence, is my experience. I have seen them clear up as far as Stony Point, up at Newburgh and up as far as Mr. Astor's, on the east side of the river above Hyde Park, nearly up to the Esopus Meadows.

Q. Most of these yachts have been in the night, mostly?

A. I have seen them in the daytime and night-time as well. They don't need any light in the daytime.

Q. You said you thought you got to Poughkeepsie about dark on the second trip. By what fact do you fix it?

A. I can't say as to that particularly. I know it was along
161 in the fore part of the night; it was dark. When we got there we had our lights all set and had them so for some time below there. I am certain it was dark.

Q. Will you give your best impression of how late it was?

A. I don't know that I can really be positive as to the time; perhaps about 9 o'clock; this was in the month of August; it might have been after nine o'clock; I can't call to mind exactly the time. It was some time, I think, the latter part of August I came from New York; I think we had not stopped on the way. I can't say what time I left New York.

Q. Why can't you recolloct the time you left New York as well as the time you got to Poughkeepsie?

A. I don't say exactly the time we got to Poughkeepsie; I said as nearly as I could recall.

SETH N. ELDRIDGE sworn for defendant.

Examined by Mr. BENEDICT:

Q. Where do you reside?

A. My native place is Chatham, Mass.; I follow the sea; have followed the sea about forty years; been master thirty-two years.

Q. Where have you navigated?

A. All parts of the world.

Q. Were you the master of the Yosemite?

A. I am at present; I was master of her when Mr. Belden owned her; I was master of her about a year at that time.

Q. Where did you sail with her when she was owned by Mr. Belden?

A. From New York outside Sandy Hook, into the Delaware, and also into the Chesapeake and up the York river about thirty miles, up to the Yorktown celebration.

Q. How far east have you been with her?

A. Mount Desert and the intermediate ports. I have only been to Boston once. We have been to Salem and Cape Ann and all those places. I was on board of her the night of this collision. She left New York, I think, somewhere about half past three o'clock.

162 Q. At the time you came around Esopus light where were you?

A. Alongside of the wheel, in the pilot-house, starboard side.

Q. Who was in the wheel-house?

A. Captain Craig. There were two forward; one was quartermaster; also another person; Albert Johnson was the quartermaster; he was on the lookout forward; he was standing on the lookout, about twelve feet from the bow; she runs out very sharp. There was another man there a little after that—John Minyard or Reynard. James Hinckley was mate; he was down below at the time; that is what he told me; I didn't miss him from the deck.

Q. Do you remember how long before that he had been about the pilot-house?

A. Might have been five or six minutes. We keep a log slate in the pilot-house; on that we enter the place and the time we land and start; more particularly outside than we do inside; we keep a natural marine log; the ports and the time we pass the different points; that is the custom of all sea-going ships. The crew of the Yosemite were twenty-two.

Q. How were they divided?

A. There were ten in the engine-room, divided into two watches; we carry two engineers; then there were six sailors and two quartermasters and one mate and myself.

Q. Were there any others of the hands on deck, as far as you know?

Q. No, sir; Mr. Belden was standing right outside of the pilot-house; those who were present, to my memory, were myself, Capt. Craig, Johnson, Minyard, and Mr. Belden. It was a starlight night; passing clouds; not what we call a very dark night. I saw no indications of a thunder-storm—merely passing clouds—a very good night to show lights. We consider the darkest nights the better to see lights, unless it is foggy or rainy; this was a clear night; the Yosemite had a red and green light and the mast-head light.

Q. How high above the deck was the mast-head light?

A. 54 feet, I think.

163 Q. Were these lights of yours placed under the direction of the supervising inspectors?

A. Yes, sir; it was where I was ordered to put it to cruise all bays and harbors and all parts of the world. It was put at the "heel of the topmast," as we call it. I get a license from the steamboat inspectors. I had a license at that time.

Plaintiff moves to strike out answer from the third line after the words "yes, sir; to cruise all bays and harbors and all parts of the world," as not responsive to the question.

Second. That it tends to contradict the license under which he ran.

Third. That the statute controls what lights a vessel must carry and where they must be placed, and that any statement in conflict with what the statute requires, if made by the inspector, is no justification whatever for having different lights from what the law requires, and that there is nothing to show here that this was a statement made by the inspector to him, and that it is in any event hearsay and improper.

The motion was granted and defendant excepted.

Q. Where did that license authorize you to go? Under that license where were you authorized to go?

A. Any part of the world.

Q. (Presenting same.) Do you remember that as being a copy of the license?

A. I guess that is a copy; I never examined it minutely.

Q. What was the character of those lights?

A. Our red and white lights were splended lights. They were the finest lights that can be procured. They are called the French

lens lights. I saw those lights that night. I saw them every 15 or 20 minutes. I stepped out of the pilot-house and looked at them. I saw them before and after the collision.

Q. How far that night could those lights be seen?

164 A. I should judge they ought to have been seen two or three miles—that is, the side lights, and the mast-head five miles—that is, everything forward abeam.

Q. What first attracted your attention to the Vanderbilt?

A. I saw the red and white light (in fact, two white lights) nearly ahead, ranging to the westward, as we went along, and finally, after a certain time, I was watching them with Capt. Craig, and at the proper time we gave a blast of the whistle.

Q. How far away do you think the light was at that time?

A. It might have been half a mile, I should judge.

Q. What sort of a whistle has the Yosemite?

A. Splended whistle; hear it for a long distance.

Q. What next occurred?

A. The pilot gave one whistle blast and he didn't get any reply. I waited, perhaps, from 35 to 50 seconds; that's a long time to wait to get another blast; then he blew another whistle and he got one in reply.

Q. During that time how were the lights on the Charlotte Vanderbilt working?

A. Working a little to the westward of us. In from 30 to 50 seconds the Vanderbilt gave two blasts of the whistle. Between the first and second whistle probably it was from 30 to 50 seconds. He gave two blasts and then immediately Capt. Craig caught hold of the bell-pull and gave four bells and pulled the whistle, and before he could get the whistle out we were in the crash. Before he rang the bell I said, "Mr. Belden, there is going to be a collision."

Q. What was the character of the blast that Craig blew?

A. One was a quick, and the other one was a kind of long one. We were going together. He would have given three whistles.

Q. How far away do you think the other light was at the time when the whistles were exchanged—the one whistle?

A. About 400 or 500 feet. The one whistle was given when she was 400 feet away.

Q. How far do you think she was away when she blew two whistles?

165 A. It seemed to me there was no distance at all. There might have been 100 feet when she gave two whistles and gave a rank sheer.

Q. Up to the time the one whistle was blown and exchanged, what lights had you seen on her?

A. I had seen a red light up to the time they gave the second whistle. She turned and showed her green light. She came in this fashion (indicating) and came off so (indicating) across our bow. At the time we struck she headed apparently nearly across the river. We were heading not quite up the river, but towards some black land ahead of us. I don't know what it was. I noticed Capt. Craig make a change in the wheel. After he blew the first whistle and

got the answer he just threw her over a very little to turn her head to the eastward, what we call "porting her wheel." I noticed her head swing in that direction a very little.

Q. How was she heading?

A. She was heading nearly on the Rhinebeck bluff, and when he swung her he swung her on the bluff. Then there was not time to do anything, because we were so close together.

Q. Did you hear any bells struck on the Vanderbilt?

A. I heard bells.

Q. When did you hear bells on the Vanderbilt?

A. Just previous to or just about the time we got our blast. It was all done within 10 seconds apparently after he turned his boat.

Q. At the time when the one whistle was exchanged, if the Vanderbilt had made no change in her course, would there have been any difficulty of her passing clear of you?

A. No, sir; she would have passed about 250 or 300 feet.

Q. At the time you heard the two whistles was there anything that could be done on your part to keep clear of her?

A. No, sir; the collision was then inevitable. I spoke to Mr. Belden about it as soon as we got the whistle and before the bells were rung. When I went up the Delaware and York rivers
166 with this yacht she had the same kind of lights. I had always been in the habit of seeing such lights as that.

Q. What do you say as to the putting of a high range light on the stern of the Yosemite?

A. I would be subject to a fine and a year's imprisonment, I believe. To change the lights I should be subject to a heavy fine. That is my opinion about it.

Q. Isn't it the general custom to carry the lights on the vessel where those were carried?

A. Yes, sir; wherever I go those lights always carry me except on the Hudson river.

Q. Rigged as the Yosemite was and the sails furled, if she had had a light at the stern wouldn't the foretopsail have interfered with the light?

A. Yes; except about a point on each side.

Cross-examined by Mr. CANTINE:

A. I first went upon this yacht, I think, the third of August, 1882. I have been on her every season since.

Q. You are quite sure that was August 3d, 1882?

A. I shall be three years on her in August, 1884, so that it would make it 1881; it will be three years when it comes next August; I had been captain of a yacht before; this same kind of a yacht (steam yacht), and captain of English and American steamers, but not of a steam yacht before; I have been captain of ocean-going steamers running between Boston, Philadelphia, Baltimore, and New Orleans, and from New York to Providence and Boston; no English steamer running upon those routes; on an English steamer running to Halifax, St. Johns, and Sidney and the British prov-

inces; I was master part of the time on the steamers running to all those different places.

Q. How much of the time were you master on ocean-going steamers?

A. I was on one English steamer six months. The last twelve years I have been master of different steamers and ocean-going steamers.

167 Q. Have you ever navigated upon the Hudson river except upon this vessel?

A. Yes, sir; on a schooner up as far as Rondout. I was up before the war and since the war—I think fifteen years ago I was up; two trips. The schooner was an eastern schooner or coaster. We started on the day of this collision from off the Battery; started from City island to the Battery, and I went ashore and procured a pilot.

Q. City island is about at the mouth of Long Island sound?

A. I don't know where the mouth of the sound is really. It is 18 miles from the city hall, New York.

Q. What are the two big forts there?

A. Fort Schuyler and Fort Adams; it is about three miles beyond that.

Q. City island is about at the west of Long Island sound?

A. I don't know if we knew where the end is; there is no end to it, I believe; from the time we left City island that morning until the time of this collision, we did not at any time have our sails set.

Q. Where is the last place you made a trip with this yacht before that time?

A. I couldn't say. We were going from one port to another. We were going about every day, either east or up through the gate and up through Sandy Hook. My log shows all that.

Q. From the time you went aboard of her until the day of this collision, is there any time when you had been sailing by steam power that you had your sails spread?

—. Yes, sir; I can't give you the days and dates. It might have been a week before this collision; I couldn't swear to it. You asked me and I told you I couldn't tell. I would swear I hadn't within two months before; it was inside of ten days we had sails on her, I think.

Q. Where were you when you had sails on her?

A. Coming from New London up to City island. We had steam up at the same time—steam and sail both.

168 Q. Can you recollect any other time from the time you went on board of her that you had both steam and sail on?

A. I couldn't remember the days and dates. I can recollect it was on more than one occasion.

Q. On how many occasions, according to your recollection, prior to that was it that you had both sail and steam at the same time to propel your vessel?

A. I couldn't swear how many times. Many times we put them on when we wanted to dry them. They were doing very little good.

Q. And when you set the sails was it for the purpose of getting

them in shape and drying them rather than for purposes of aiding navigation?

A. Sometimes for each. When we went outside we "set" them to keep the ship from rolling and keep her steady.

Q. Generally, when you had them set, was it when you went outside?

A. Yes, sir; often going up and down the sound, but not in the river. I think we never had them set when we were navigating in the river.

Q. Did you notice when you were going through Long Island sound that the steamboats that were running through the sound were carrying the central range lights?

A. Yes; what we term side-wheel passenger-boats. We started from City island that morning between 9 and 10.

Q. Did you enter that upon this slate log which you had in your pilot-house?

A. I think so; I couldn't swear to it. I had a pilot from City island to New York—John Minyard. He was the man who was standing in front of the pilot-house just previous to this collision, whom I mentioned. He was a regularly licensed pilot.

Q. Coming from City island did you steer the boat?

A. He steered her and I stood alongside of him; the mate kept the log. He kept the log by transcribing from this slate in the pilot-house.

Q. Do you know who made the entries upon the slate?

169 A. I made them part of the time and part of the time he did. I told him what to put down and sometimes I would put them down myself. I had nothing to do with transcribing from that slate over into the log.

Q. Had you changed watch on that night?

A. I don't know; the mate tends to that. The mate was James A. Hinckley. I don't recollect whether the lookout in front of the pilot-house had been changed. I had not been in the pilot-house all the while from the time I left New York up to the time of the collision; I had been absent about once; the longest time was about 20 minutes to get my tea. I would step out of the pilot-house and look at the lights every, perhaps, 20 minutes to half an hour; always my custom to. I was wholly unaccustomed to the navigation of the Hudson river. I didn't undertake to take charge of the vessel; the pilot had charge of her; therefore whatever was done by the pilot previous to this collision was a matter of his judgment and not of mine. I didn't undertake to dictate to him or control him, nor did this other pilot that you had on board; he was only pilot as far as the Battery; he was a licensed pilot, but he had nothing to say at all. Capt. Craig had the entire management of the navigation on that trip up. We had a compass in the pilot-house.

Q. You said you noticed that you were headed on a dark piece of land right after you passed Esopus light. Did you notice by the compass what your course was?

A. I didn't.

Q. How long had you been in the pilot-house consecutively since you had gone out the last time before the collision?

A. About in the neighborhood of 10 or 20 minutes.

Q. Do you recollect about how far you were out in the channel of the river when you rounded Esopus light?

A. I didn't notice. I don't know where the middle of the river or channel would be: I am not supposed to.

Q. Who on board of your boat first observed what turned out to be the Vanderbilt?

170 A. Captain Craig and I both spoke of it as she came out from behind the point of land. We were heading on a different course then; we were turning around on this angle (indicating).

Q. You saw her when she was coming around the point of land?

A. We saw her lights. It purported to be the Vanderbilt. I can't remember what we said. When I first saw her lights she appeared to be coming around from what appeared to be a point of land. I have no idea what that distance was; I never measured to see.

Q. How many lights did you see upon her then?

A. I saw her high light and the red light. I don't remember about seeing the bow light. The lookout reported the vessel soon after that; I don't recollect the manner in which the lookout reported her. When I first saw her I looked over our starboard bow. When I first observed her I kept an eye on that boat from that time until her whistles were given and till I gave a whistle—about all the time.

Q. From the time you first saw her until the first whistle was blown from your boat did the Vanderbilt apparently change her course?

A. I couldn't tell about that. She didn't change any lights; she showed her red and white lights the whole time.

Q. Do you recollect how soon after you blew your first whistle you noticed she had the bow light and the high light?

A. Previous to that I had noticed that.

Q. When you got so you could see both of those central range lights——

A. (Int'g.) I couldn't see them on a range; I saw the lights.

Q. You knew they were what they called "central range lights"?

A. I knew they were what we call river steamboat lights.

Q. When you saw both of the lights you could tell about how she was headed with reference to your boat from the position in which you saw the lights?

171 A. No, sir; I couldn't tell within four points. I didn't notice whether those white lights came nearer in range to us. I didn't try to observe them; I was watching the red light. I did not have hold of the wheel.

Q. In your judgment how far were the two vessels apart when the first whistle was given by the Yosemite?

A. Might have been a quarter of a mile or three-quarters of a mile.

Q. In your judgment how far north of the Esopus light-house were you at that time?

A. About half or three-quarters of a mile, I think.

Q. In looking at the lights upon this vessel that night do you want to be at all certain of the distance—that she was from about half a mile off?

A. I think I am pretty certain about that.

Q. That when the first whistle was given from your boat to the Vanderbilt it was about a half a mile away?

A. Half to three-quarters of a mile. In my opinion they were apart, when our pilot gave the next whistle, about a quarter of a mile.

Q. And how long was it after he gave that whistle a quarter of a mile off when the answering whistle was given? How long between your giving the second single whistle and the answer?

A. It might have been ten or fifteen seconds. It seemed to be about the usual time to get an answer from another boat. The wind was not blowing very heavy. I am sure of that. We had the windows of the pilot-house down.

Q. When you had got this answer to your second single whistle, how much do you think Captain Craig changed his course?

A. I should say about half to three-quarters of a point.

Q. You said on the direct examination he changed the course from half to three-quarters of a point—he ported his wheel a little?

A. Yes, sir—that is, the boat goes off to the eastward or the right.

Q. Being a seafaring man and using sails that are rigged ship fashion, and the boat goes the same way you turn the wheel, would you call it "porting the wheel" when you actually turn the
172 wheel to starboard?

A. If I was aboard such a boat I would do it the other way. I was on board of a boat that, when I sung out "port the wheel," he would swing the wheel over to the right. Every sailor knows that.

Q. In other words, the order on that kind of a boat is given in one way and obeyed right the reverse. When you say "port the wheel," as I understand you now to say, you would mean that you would actually turn the wheel to the starboard?

A. No, sir; all sailors understand the phrase of "port the wheel." It is "heaving it over," and that fetches the tiller up to the wind'ard. There was no order given to port "the wheel."

Q. When you used the phrase "porting the wheel" upon the direct examination here, which way did you mean the wheel was actually turned?

A. We don't use the words "port the wheel." When I give a man an order——

(Question repeated.)

A. I meant the wheel was turned over to the starboard.

Q. That would be turning it directly the reverse from what the expression of porting the wheel would indicate?

A. We don't use the words "port the wheel."

Q. Did you look and see at the time you stood there in the pilot-house which way Capt. Craig actually turned his wheel?

A. He turned it over that way (indicating to the right); over to the starboard. I saw that. I did not help to do that. I had no occasion to.

Q. Sometimes in speaking of turning the wheel you speak of giving her "spokes"—they have spokes in them?

A. Yes, sir; he turned her over about two spokes; that was all he did from the time he gave his first whistle and got an answer.

Q. And up until after the collision?

A. No, sir; after that we steadied the wheel. He heaved it over about two spokes.

Q. From that time on up to the collision did he turn his
173 wheel any further over?

A. No, sir; he held it there and steadied it; turning the wheel over two spokes would give her about half a point, in my opinion; Capt. Craig pulled the four bells and then he answered two whistles.

Q. Your recollection is he pulled the four bells before he gave the two whistles in answer to the two whistles that had been given from the Vanderbilt?

A. He pulled the four bells first. I am certain of that. It was about all given together; by the time he grabbed the whistle they were together.

Q. Did you hear the bells on the Vanderbilt which you said you heard before your bells were pulled?

A. About, perhaps, five seconds before, or something like that.

Q. Till your bells were pulled your boats were going at full speed?

A. Yes, sir.

Q. Do you think, with those boats going at their combined speed, that you could have heard the bells of the Vanderbilt on your boat?

A. I heard the bells about the time we clashed together. I heard the bells about simultaneous with the collision.

Q. Then I assume you heard the bells on the Vanderbilt just about simultaneous with the time that Capt. Craig pulled the bells on your boat?

A. Yes, sir; it might have been three or five seconds previous.

Q. Would you want to be understood as being reliable when you give two or three or four or five seconds; isn't it a judgment based upon such a short space of time that it would be wholly unreliable?

A. No, sir; my boat had not stopped her way at all; had no occasion to; heading her stopped her some, but not the engine.

Q. As a matter of fact, didn't the captain give two pulls of the bells which would mean to slow and stop, and then wait some few seconds and pull the other two bells, and the last two bells that he pulled were just previous to the time of the collision?

174 A. No, sir; I am sure of that. I am as sure of that as anything else I have sworn to; when this bell-pull is given the sound produced in the engine-room is instantaneous; there is

no loss of time; you hear the bells in the pilot-house when the sound is in the engine-room; there is a return speaking tube; you can hear it in all parts of the pilot-house.

Q. If you were away from your speaking tube some little distance you could not hear it?

A. Oh, I have heard it; it is a very strong bell.

Q. Did the bell on the Vanderbilt appear to be about as strong a bell?

A. I didn't see it; from the sound of it I should say no. I can't say. I do not recollect hearing the wheels of the Vanderbilt.

Q. From what you could hear and see, do you want to be understood as saying whether the wheels of the Vanderbilt were going with a forward motion or not?

A. I never saw them; I was watching my ship; of course I could hear.

Q. Wouldn't the noise of the paddle-wheels just as readily reach you as the sound of the bells?

A. No; I don't think it would; the Vanderbilt appeared to be coming at a rapid rate of speed; I think she would come about as fast as my boat; about the same; we had been running about the same rate of speed all the way from New York to this place; about the same; some places faster and some slower. I recollect stopping at one place; that was Poughkeepsie. I recollect that, from the fact that I was aboard.

Q. Were any persons on board of your yacht that were on deck that you know of other than the two men who were standing in front of the pilot-house and Mr. Belden at the side of it and Mr. Haines?

A. The only guests were Mr. Belden and his wife and Mr. Haines and his wife.

Q. How many of the crew were on deck 15 minutes before the collision?

A. I couldn't say; running nights, they keep abaft so we can see from the pilot-house.

Q. There were 10 in the engine-room which constituted
175 the crew, and it would be no part of their business to be on deck?

A. They had no business on the deck unless I called upon the engineer and gave him my orders. I can't remember whether I called on the engineer to man the boat or not. I have no recollection. I know the boat was manned by the engineer's crew in part. Whether I called upon him or not I don't know. I cannot give the names.

Q. Nor the place where they were stationed?

A. I don't know what part of the boat they were. My business was to attend to a master's duty.

Q. In your engineer's department you said he had 10 men; how many engineers were there among those?

A. Two engineers, first and second assistant. In the pilot-house in the night-time we have a light in the forward binnacle.

Q. That is covered except when you want to look at the compass?

A. Obscured, except for the compass, and when we do not want to take the actual course of the compass the light is covered.

Q. You said you had been master on British steamers. Are you an American citizen?

A. Yes, sir; never been a British subject.

Q. You say you were a captain. In fact, weren't you a mere assistant on these English steam vessels, and not an actual captain?

A. No, sir; I was captain of the vessel on this coast. That was while she was running simply from points on the coast; on the American coast and on the British coast, what we term the British provinces.

Q. I understood you to say that at one time the Vanderbilt changed and gave two whistles to you, and that she succeeded in being sheered so from substantially right down the river, so that she got almost across the river?

A. She was sheering and gave the whistle at the same time. She did both at the same time, and from that time she had sheered from nearly straight down the river almost directly across the river.

Q. Take it in line of up and down the river, how far do you
176 think she was west of you at that time? How many feet east do you think you were of her at that time when you noticed she began to sheer across the bow?

A. Between 200 and 300 feet.

Q. If she could sheer from almost straight down the river to nearly across the river and could make the distance of at least 200 feet from a west line to where you were, what in the world was there to prevent your boat from doing something to sheer to the west?

A. We done it as quick as the whistle was given.

Q. You did, then, sheer to the west?

A. No; we slowed, stopped, and backed and gave two whistles. We would have given a third whistle but we struck at the same time.

Q. Do you mean to be understood, then, that it took you so long to give the two whistles and slow, stop, and back that the other vessel could make 200 feet to the east from the line where she was and make the distance between the two boats at the same time and get from nearly straight down the river to almost head across?

A. As they said, she was going at the rate of ten miles an hour. How many seconds would that take?

Q. Do you want this jury to understand that it took Captain Craig the length of time to pull the two whistles and give the four bells that it took the Vanderbilt to get from the line she was coming down the river, which you say was about 200 feet west of the line of your boat, and to sheer across with this rank sheer and to get to way across your bow?

A. Yes, sir; she could do it in that time.

Q. Couldn't your boat, in the same time, have sheered to the west and done as much?

A. No, sir; if we had sheered we would have gone into the boiler and undoubtedly no one would have been here to tell the story.

Q. If you had struck the boiler you would have struck about eighty feet west of where you did strike?

A. No, sir; not as I understand the construction of the
177 boat. I understand the boiler was about twenty feet from where we struck her. I understood it so.

Q. Do you mean to say you couldn't have swung to the west more than enough to have got twenty feet from the west?

A. No, sir; even if we could have done it I probably should not have done it.

Q. What was the name of your engineer and assistant engineer?

A. James Fitzpatrick was the chief engineer. I can't remember the assistant's name, but I think it was Blair. I don't remember his first name. The number of the crew was twenty-two—crew and officers.

Redirect examination by Mr. BENEDICT:

Q. You were asked by Mr. Cantine as to the lights upon steamboats on the sound, and you said there were side-wheel boats there that carried the range lights. Did you ever see a vessel carrying sail there that carried the range lights?

A. No, sir; I never did.

Q. What lights does the steamers that are built for carrying sail on the sound carry?

A. Same lights we do.

Q. What lights do the ocean-going steamers on the sound carry?

A. Same as we do.

Q. You said you recollected once of stopping at Poughkeepsie as you went up. Did you come to a dead stop?

A. I can't seem to remember about that. I don't remember the length of time we stopped. We didn't come to anchor.

Q. You stated, in answer to Mr. Cantine, that you thought that the Vanderbilt was 200 or 300 feet to west of you?

A. Yes, sir; I mean at right angles with our course.

Q. You were heading in a certain direction when you say she was 200 feet to the west of you. Is that on the idea that your course was directly north?

A. It is the distance she was away from us at the time. I looked at the lights of the Yosemite after the collision. They were
178 burning well; the same as before. Nothing was done to them to brighten them up after the collision; went right on with the same lights. There is no need in order to know what direction a vessel is going in the night, except to see the mast-head light and the red light. Any one who is experienced on the water can tell as long as they can see the red and green light—they can tell which way the boat is going. Sailing vessels never carry only the red and green light, and those tell which way she is going

Q. In how great a distance do you think the Yosemite could be stopped by reversing the engine and backing her when she is going 12 miles an hour?

A. Owing to how the current is running. 4 to 6 times her length, I should say, going that speed.

Q. You have been asked as to Minyard. Did you know where he was to be found?

A. I knew at that time. I took his address. I remember your sending for me a short time ago and asking for the man's address. I had been up the Delaware river on the Yosemite about 12 or 15 miles; that's all. I am still captain of the Yosemite. I have been running on her since Mr. Belden owned her; up and down the Hudson, on Long Island sound, and Sandy Hook; have run up the Hudson as far as Newburg in the daytime. Twice we got benighted and we put up the same lights we had on this time.

Recross-examination by Mr. CANTINE:

Q. What part of the way down at night did you run with her?

A. I think at one time we put them up at Tarrytown and stopped off at Yonkers about 8 o'clock; from there we went around to Ninth street and arrived at about half past nine o'clock; that was on one occasion. There was another time we got off somewheres about Yonkers. We put up the lights to run down to Yonkers. That's all the time.

Q. Is one of those two occasions the occasion that the pilot
179 swore he was on board of her when they went down and had these lights up in the night-time, going up a short distance?

A. I think so. I know what "bending" of the sails is.

Q. Weren't her sails taken off of the masts and yards, &c.?

A. There were no sails upon her while Mr. Tilden was running her.

JAMES HINCKLEY sworn for defendant.

Examined by Mr. BENEDICT:

I reside at South Venice; am 41 years old. I have followed the water since I was 13 years old. I have been from boy up to the present position as first officer both of sailing vessels and steamships. I have been "'round the world," as the sailors term it, from "'Frisco to New York."

Q. What experience have you had on the Atlantic coast?

A. Quite a lot. I have been 18 years steamshipping from New Orleans to New York. I have not had any experience on the Delaware; no experience up the Hudson except when I was on the yacht Yosemite. I had never been up the Hudson before this voyage. I was first mate on the Yosemite on this occasion; I part of the time on deck on the voyage up of the Yosemite. I was on deck when we started from New York.

The Yosemite had first-class lights. It is the duty of the mate on board any steam vessel to look at his lights, and I looked at the Yosemite's lights that night. I looked at them both before and after the collision; they were burning bright. If they were not I should have had them trimmed, probably. There was no trimming of them after the collision.

Q. How far could those colored lights be seen that night?

A. They ought to be seen that night, at the least calculation, if anybody had their eyes open, to the horizon, a good two miles, if

not more, and the mast-head light ought to be seen five miles according to law, and it would be. In a clear atmosphere a
180 white light would shine very distinctly against the black-board, and I claim the Hudson has very good scenery for that.

Q. Did you ever see better lights on any steamer than those on the Yosemite?

A. No, sir; I have seen larger lights, but no better ones—larger lights on other vessels.

Q. How large were these side lights?

A. It was an oval glass, and, if I can recollect right, according to my judgment, the glass would be about 12 x 14, 14 inches up and 12 inches that way (indicating). These side lights were set; the red light on the port side and the green light on the starboard.

RICHARD KING sworn for the defendant and testified:

Examined by Mr. BENEDICT:

I am cook and steward. I was on board of the Yosemite on this night in question; steward on board of her. I was there from the first day Mr. Belden took her. I think it was from the 25th of January, 1881, until last year, when she was sold. I remember the night of this collision between these two boats. I was down below in the saloon, in the pantry.

Q. What was the first you heard?

A. Well, all I heard was some whistles, but I couldn't say exactly how many, and I heard three or four bells ring in succession, and at the same time the bells rung I felt the boat kind of tipping over, and the cups and everything in the pantry was swinging. That was about the same time the bells rung.

Q. Could you tell whether there was any length of time between these bells that you heard and the whistles that you speak of?

A. If there was any it was very little. I have heard several whistles on deck, but this boat passing so many boats (sometimes a dozen boats and steamers) I didn't pay so much attention to her.

181 Q. How far away from the pantry was the engine-room?

A. I was standing in the middle of the pantry and the whole length of the pantry is about seven feet, and a door going out of the gangway was open, and about eight or nine inches from there there is a window goes into the engine-room and that window was broken, and I could hear the bells in the engine-room. I was away about 12 or 15 feet, I suppose.

JACOB BRANDOW sworn for defendant and testified:

Examined by Mr. BENEDICT:

I reside at New York. I am in the tugging business just now—steamboating; that has been my business for the last 30 years; around New York harbor and Long Island sound, by way of Sandy

Hook. I have a license as master and pilot of steamboats. I am familiar with the yacht Yosemite.

Q. You have seen her, so you know what kind of a vessel she is?

A. Yes, sir. I was pilot of her a couple of days last summer; one day up Long Island sound and one day up as far as Newburgh. We went down in the night part of the way, about from Haverstraw, I think. I saw her lights at that time, so I know what they are.

Q. How much experience have you in being about the Hudson river?

A. I was 10 years on the Hudson river before I went in this business. Before I went in this business I had been going up and down the river three and four times a year.

Q. How far up the river did you say?

A. I have been up as far as Catskill and Newburg and Poughkeepsie.

Q. What is your experience as to seeing such lights as the Yosemite had—the white mast-head light and the red and green lights on the Hudson river?

A. I think it is a very common thing to see them; com-
182 mon thing to see them coming up and down the bay and up as far as steamers go up the North river. I never saw an ocean-going steamer carrying other lights than those three lights; either in the bay or in the river.

Q. What do you say as to a steamer carrying sail, whether you have ever seen such a vessel under way carrying any other lights at night?

A. No, sir. It doesn't make any difference. I am familiar with the range lights on the North River steamers. I have seen them all. I remember the rig of the Yosemite; a stern range light on the Yosemite would be of no use "head on." I have piloted men-of-war on the river; six or seven up as far as West Point; not at night. I went down with two in the night.

Q. What lights did they carry?

A. The same; light at the foremast head and side light.

Q. Is there any difficulty to a pilot, who is competent to navigate a steamer on the Hudson river, understanding what direction a vessel is going with the white mast-head light and the red and green side light and without any other light?

A. I shouldn't say there was if her red and green light was burning bright, not very often.

Cross-examined by Mr. CANTINE:

Q. You say if they had the central range lights by a stern light upon this yacht they would be of no use when they were "head on"?

A. No, sir; they wouldn't be.

Q. How much would they have to get off of "head on" before you could see both of those lights?

A. Get off one way or the other, and there is the rigging besides; it would take a point; it would depend upon how close they were.

Q. If, say, a quarter to half a mile would they have to get off as much as a point?

A. I guess so.

Q. As a matter of fact, are not many of the steamboats that carry the central range lights, and that have only one smoke-stack, and that in the middle of the boat, rigged with their rear light as
183 high as the smoke-stack, so one would not be able to show the central range light when dead ahead?

A. In our business we are obliged to carry our flag-staff high enough so they can be seen above the smoke-stack; the law compels us to.

Q. Will you tell us what law that is?

A. That is the regulation we have had sent to us.

Q. Do you mean to say as a matter of fact that on these boats that have a smoke-stack in the center of the boat that they uniformly carry the rear light higher than the smoke-stack?

A. We were notified two or three or four years ago by the inspectors to have our flag-poles high enough so the lights could be seen over the smoke-stack from forward. I got that notice from the steamboat inspector.

Q. How many years did you say you had been around the harbor of New York, &c.?

A. Thirty years steamboating, and I was pilot three years on the Fulton ferry before that; I mean as master and pilot and part owner.

Q. You say in running these tug-boats you run up the river. Was that a very occasional thing?

A. Once in awhile.

Q. When you speak of "once in awhile," do you mean that is often in the course of a year to Hudson or Catskill?

A. I have not been up in three or four years; two years ago I was up several times as far as the highland rocks; being part owner, I don't change very often from one tug-boat to another; I have been on one boat for 19 years.

Q. You spoke of coming up the river occasionally. Did you mean this time coming up the river when you came up with your tug-boat for towing purposes?

A. Yes, sir.

Q. Have you come up the river on vessels at any other time in the last 10 years?

A. I go up frequently through the summer on the river boats as a passenger, two or three times in a season.

184 Q. You say it is a very common thing to see steamboats with these high lights and the red and green lights?

A. Yes, sir; mast-head light.

Q. Do you mean it is a common thing to see them north of 65th street, where the elevators are?

A. I have seen them up as far as Newburg in the night-time with lights up; I saw them up there a couple of years ago; I have been coming up and down in the boats; I can't give any days or dates; I can recollect more than one occasion when I saw them up as far as Newburg.

Q. Was it in the same year?

A. I can't remember; I have been going up and down the river every year for the last 30 years.

Q. How many times will you say you saw in the vicinity of Newburg steamers with the high head-light and no bow light?

A. Maybe three times; that will run back inside of three years.

Q. When you run the yacht down once in the night-time, as you say, did you set your lights at Haverstraw?

A. I think it was about there; I ran down to New York to 23d street on the North River side; we got there about 9 o'clock, I think.

Q. What time of year was it when you made that trip?

A. August, I think; latter part of July or August.

Q. When you said it was a common thing to see steam vessels with that sort of light, didn't you mean that it was a common thing to see them coming up through the Bay of New York and up to the docks of the city, and did not mean to apply that to the waters of the Hudson river north of Spuyten Duyvil?

A. I haven't been up the river very much, but I have seen them in the New York bay and seen them come up in the night as far as 65th street; that I very often see; above that I don't very often see it.

Q. Don't you mean to say to the jury that your observation is substantially all south of that place and that your business is south of that place?

A. Yes; the principal part of my business is south of there.

185 Q. You said that you piloted two men-of-war from West Point down?

A. Yes, sir; the last one was two years ago, I think, when the French commissioners came up to West Point. The other time was about two years before that.

Q. Do you recollect what time it was you left New York to go to West Point?

A. We went down late in the afternoon. It got dark when we got down along about Haverstraw.

Q. Then you set the high mast-head light and the other two lights and went from there down to the city?

A. Yes, sir.

Redirect examination by Mr. BENEDICT:

I understand the language of the whistles.

Q. What do you understand, where a steam vessel gives one whistle which is answered by one whistle, as to the duty of the two pilots in passing?

A. That means for each vessel to go to the right.

Q. If, after those whistles have been exchanged, either pilot finds that there is any danger of collision in passing or anything in the way which prevents his passing to the right, what, in your judgment, is the requisite for him to do?

A. He ought to stop immediately.

Q. What with reference to whistles?

A. Well, blow three whistles or blow "confusion," as we call it, and stop at once.

Q. If a pilot came to the conclusion after he had received one whistle and answered it with one whistle that he could safely pass upon the left-hand side, wouldn't it be proper for him to give two whistles to the other vessel, and if he got two whistles in answer from the other vessel to proceed to pass upon the other side?

A. I shouldn't consider that safe in the night-time.

Q. If he gave the two whistles and got the two whistles in answer wouldn't he have the right to proceed, supposing it to be safe?

A. I suppose he had the right to try, but it is a dangerous business.

186 Q. As a fact, isn't it quite a frequent thing after whistles have been exchanged to give different whistles and receive different whistles in answer?

A. Not going up and down the river.

Q. Where is it proper if it is not going up and down the river?

A. It is a common occurrence in New York bay.

Q. With all the vessels there are in New York bay, is there half as much room as there is in the Hudson river with a fewer number of vessels?

A. Vessels bound up and down the river, each vessel intends to take their own side of the river.

Q. It is the law on the East river that they keep in the centre of the river as near as they can?

A. Yes; but they don't do it.

Q. If two vessels are on the Hudson river and are approaching and one pilot should conclude, exercising his judgment, after he had received and answered a whistle, that he couldn't safely pass upon that side, but could, in his judgment, safely pass on the other side, and then gave two whistles and received two in answer, wouldn't it, according to the sailing rules, be proper for him to proceed on that?

A. It is a dangerous thing to do. He obliges that other man to stop.

Q. If you as pilot upon your tug-boat have either given a whistle to another boat and it is answered or you have received a whistle from the other boat and answered it (each giving one whistle) and you conclude you can more safely pass on the other side and then you give the two whistles and are answered, would you consider you were justified in passing upon the other side?

A. Yes; I would. I would want plenty of room, though. I would exercise my judgment.

Q. When two steam vessels are approaching each other and a collision is likely to ensue, isn't it the duty of each one as much as it is of the other to slow, stop, and back to prevent a collision?

A. I consider it so; yes.

187 Q. How far apart would you say when you said "would want plenty of room"? Suppose the vessels were coming together at the rate of 10 miles an hour?

A. It would depend upon the length of the vessel.

Q. Say 200 feet long.

A. I should want daylight for at least half a mile; in the nighttime I should want more.

Q. Do you mean to say it would be the duty of the other to keep on if a collision is imminent?

A. Not a duty, but a right.

Q. If two boats were coming in what I think they call "the fifth situation," and they were approaching so that the vessel on the starboard side was headed so she would be heading only two or three points upon the bow of the other vessel and approaching in a line that a collision would be imminent, wouldn't you say under such circumstances that both were equally bound to stop?

A. They were both bound to stop as between man and man; we ought to stop anyway; the regulations say that both boats shall be slowed, stopped, and backed.

Q. Didn't you understand the question when he put the question as to when two boats were crossing each other at right angles?

A. The boat that is bound up and down the river has the right of way and the boat crossing the river must stop.

Q. When they are approaching upon converging lines, wouldn't it be the duty of both to stop?

A. Yes, sir; I think it would.

Q. I didn't mean at right angles; I am taking the case when, as the rules provide, two vessels are crossing and one has the other upon her starboard hand, bound to keep out of the way of the one that is going ahead of her. That is your understanding of it?

A. Yes, sir.

Q. Under those circumstances, if either is bound to stop, it is the one that is bound to keep out of the way of the other rather than of the one whose duty it is to keep on?

A. The one that is parallel with the river I understand has the right of way.

188 CHARLES HAZARD sworn for defendant.

Examined by Mr. BENEDICT:

My business is a steamboat broker at the present time and has been since last October.

Q. What has been your business?

A. Steamboating for 47 or 48 years out of New York and up the Hudson and east; all the way from Maine to New Orleans; up the Chesapeake bay and up the rivers running into it; up the Delaware bay to Philadelphia and up the Hudson river as far as New Baltimore; not much up the Connecticut river.

Q. Up any of the Maine rivers?

A. Not a great deal; Portland and Newburyport and those places; I have seen the yacht Yosemite; I know how she is built and how she is rigged.

Q. How usual or customary is it to meet such lights as the Yosemite carries on the rivers and bays of the Atlantic coast?

A. There is a class of steamers that go through Long Island sound and up the Hudson that always carries that light and that go out by

way of Sandy Hook to Nantucket; there is another class of steamers that also go there that carry the white light forward and the light on the flag-pole aft; the way we designate them apart is this: If we meet a mast-head steamer and no bow light we know what kind of a steamer she is.

Q. Have you seen such lights as that frequently on the rivers—the white mast-head light and the red and green side light?

A. In the last three or four years they have been quite numerous on the Hudson river; on the Delaware we meet a great many; there are more steamships on the Delaware river than on the Hudson river.

Q. How about the James river?

A. The Old Dominion steamers run up there, but no steam-yachts; they carry the same lights on the Old Dominion steamers; they run up to Richmond.

189 Q. With those lights (the white mast-head light and the red and green side lights), is there any difficulty in determining the course of the vessel which carries the lights?

A. No, sir; there is no difficulty whatever. There is nothing else that is necessary to know as to an approaching vessel in order to know which way she is going, and those lights tell that.

Q. What do you say in regard to whistles? Suppose one whistle is blown and exchanged, what is the duty of the vessels as to passing each other?

A. It is a very rare occurrence after a man blows one whistle and it is answered that the whistle is altered. It is a rare occurrence to acknowledge the whistle and then alter it afterwards.

Q. If the whistle has been blown and acknowledged and the pilot then comes to the conclusion that it is not safe to pass in accordance with the one whistle, what, in your judgment and experience, is it his duty to do?

A. I never knew a case where a man blew one whistle to alter his mind afterwards excepting where he was going to avoid a collision by it. If the man ahead answered his whistle, and he acknowledged his whistle, and he altered his mind afterwards—that I have known to occur, but that was in the harbor of New York and never on the Hudson.

Cross-examined by Mr. CANTINE:

I have been a master nearly 45 years. I have been a pilot during the whole 44 years—pilot and master.

Q. How many years have you run on the Hudson river as pilot or master north of New York city?

A. About four years—part of the time. I never claimed to be exclusively a North River man; run as far as New Baltimore.

Q. Was that as long as four years?

A. A little longer than that. I think it was about four different seasons; it was on the steam-tug A. C. Cheney.

Q. How many years ago?

A. I left here two years ago this March.

190 Q. Do you recollect seeing on the Hudson river, while running on that route, vessels in the night-time with such lights as have been described on this yacht—high head-light and the green and red light at the side?

A. I never saw one above Newburgh that I know of. I saw several below there.

Q. Wasn't it a rare occasion to see any below there?

A. Yes, sir; it was. At the same time I knew just what they were. I had become familiar with the character of these lights from having sailed on the ocean.

NAPOLEON J. HAINES sworn for defendant.

Examined by Mr. BENEDICT:

My business is a dealer in and manufacturer of piano-fortes. I was on board of the yacht Yosemite on the night of this collision. I had sailed on her before a great many times; anywhere from 10 to 20 miles south of the lightship, Sandy Hook, to Maine. Just before the collision I was about 15 feet from the extreme stern end of the vessel, setting on a camp chair, smoking a cigar; two ladies were with me, in front of me—Mrs. Belden and Mrs. Haines; we thought it was a very pleasant night; it was an ordinary night, not extra clear or extra dark.

Q. Have you navigated enough to know whether it was a good, clear night for seeing lights?

A. I know I saw a good many lights very plainly that night.

Q. As you were sitting which way were you looking?

A. I was looking towards the forward end of the vessel.

Q. What first attracted you with reference to the matter?

A. The first thing that attracted my attention was the whistle.

Q. Tell what you heard from that time out.

A. I heard the whistle, and as I always do when I am aboard
191 of this yacht, I take it upon myself to see what it is for. I saw a vessel about, I should say, a mile off, and I saw the red and white light. After the whistle I kept my eye on this vessel. They didn't answer the whistle. I should say it was 10 seconds, if I can calculate at all in such time. When one is anxious it seems longer than it really is generally, and then the second single whistle was blown from the Yosemite. There had been none from the other then. I jumped to my feet and I said, not very elegantly, probably, "Why the devil don't that man answer the whistle?" I was attracted by the second whistle and jumped to my feet.

After the second single whistle was blown from the Yosemite, I should say in five or six seconds, probably, I heard a whistle which I supposed came from the Charlotte Vanderbilt; it was one single whistle. In about 30 seconds after that I saw almost the broad side of the Vanderbilt and heard the two whistles afterwards, very quick, from the Vanderbilt. It was evident to me that there was a collision that could not be avoided. In less than 10 seconds from the two whistles of the Vanderbilt I heard one pretty short one from the Yosemite and another much shorter, and at the same time heard

her strike the Vanderbilt with the second whistle from the Yosemite. I saw the starboard side of the Vanderbilt.

Q. At the time you heard the one whistle from her, what lights was she showing?

A. Red light. It bore off to the left of the Yosemite.

Q. If those lights had continued in sight without change, would there have been any collision?

A. No, sir; as near as I could judge, there would have been 200 or 300 feet between us as we passed one another.

Q. What did you do after the collision?

A. I stood perfectly still. Then I knew we had struck this vessel, and the bow went through about as clean as anything I have ever seen, and I was on the stern end of the vessel, right over the
192 screw. The stern of the Yosemite was not touched by the Vanderbilt at all when we went by, but at the same time the stern passed the Vanderbilt the wheels of the Vanderbilt were moving. I heard distinctly the bells on the Vanderbilt—two or three. I don't know what they were. The bells were all ringing at once, in fact. I didn't hear any bells on the Vanderbilt before the collision.

Q. Did you hear any bells struck on the Yosemite?

A. I heard a jingling of bells with the splinters and crashing. Could not tell how many bells on either boat.

Q. Could you tell when the engine or screw stopped?

A. Yes; I felt it reverse. After we struck her. That all came together at once, the whistles and bells and striking her, and the engine was reversed and the paddles of the Vanderbilt were moving backwards at the same time, I suppose, because they were working. I was where I could see it.

Q. When did you arise?

A. The moment he blew his second single whistle.

Q. From where you were standing was there anything to interfere with your view on the Yosemite?

A. I could see forward down the passageway, through over the deck, both sides. I couldn't see through the house or smoke-stack, but I could see through the passageway.

Q. What do you know about getting out the boats of the Yosemite?

A. I know that after we went through the Vanderbilt, I presume we stopped as soon as we could and they immediately went to work getting the boats down. I went to the gangway and stood there, and I thought they worked very rapidly indeed.

Q. Did you see the people from the Vanderbilt as they came aboard?

A. Yes, sir; I stood there and looked at every one of them and counted them. I had conversation with every one of them.

Q. Did you have any conversation with any of them as to the lights?

A. Yes, sir.

193 Q. With whom?

A. I asked about nearly all of them something about lights, especially two colored people.

Cross-examined by Mr. CANTINE:

Q. Have you any recollection of the time you started from New York?

A. I should think about half past three o'clock.

Q. Is that a general recollection or did you look at the time to take any note of it?

A. I left Mr. Belden's office about ten minutes after 3 o'clock. That is just opposite Rector street, in Broadway. I went from there down to the Battery, and when we were on board of the gig were taken out to the Yosemite, where she laid, just off of Whitehall. She laid quite a ways out.

Q. Were the ladies then on board or did they go with you?

A. They went with us.

Q. The four of you went from Belden's office and got on the yacht at this place?

A. I think there were four; I couldn't say whether four or three. I don't remember whether Mrs. Belden went ahead or with me.

Q. Were you some little time on board the yacht before you got started?

A. Not very long, leaving at half past three.

Q. My question is whether there was any length of time after you got aboard before you got started.

A. Not very long. She was all ready to get under way, I believe, when we got there—steam up and everything ready.

Q. You say you sailed quite often in this yacht?

A. Yes, sir.

Q. And went from 50 to 20 miles outside of Sandy Hook?

A. Did I say that? I said 15 or 20 miles south of the light-ship.

Q. How far is that light-ship from Sandy Hook?

A. Quite a ways east; I don't know how far, exactly.

Q. The whole distance of these trips wouldn't be over 30 to 40 miles?

194 A. I went down to Maine. I said I had been from 15 to 20 miles south of the light-ship at Sandy Hook and to the coast of Maine.

Q. How many times, in your opinion, have you been out sailing with Mr. Belden in his yacht?

A. I never kept a record of that.

Q. You don't keep any record of time on this boat?

A. I kept a record as far as time was concerned. The time we left there was about half past three o'clock.

Q. Can you give me your memory of about how many times you have sailed on that yacht?

A. Maybe 35 or 40 or 50 or 60 times. I think as many as that.

Q. Within how many years?

A. Ever since the first day he went out in her.

Q. About how long ago was that?

A. I don't remember. I know it was in March, but I can't recollect the year.

Q. Do you recollect whether four or five or six years ago?

A. I think it was three or four years ago; maybe three and a half.

Q. How late was the latest you took a sail upon her when Mr. Belden was the owner of her?

A. Oh, I don't know. I was on her the other day, but it was not Mr. Belden's then.

Q. I mean when Mr. Belden was running her and owned her.

A. I don't know; can't tell.

Q. Can you tell if it was last year?

A. I think it was last summer; I don't know. I never was there only when he owned here. That, I think, was last year; it may not be; if it was it was the early part of the season.

Q. That don't make a period of time during the three or four years in which you have been out 50 or 60 times. That would be 15 or 20 times a year. Will you let that stand?

A. I didn't say 15 or 20 times a year.

Q. You said you had been out sailing sixty times.

A. I said 35, 40, 50, or 60. I didn't say I had been out
195 sailing every time I had been aboard of her. I have been out sailing with her about 35 times, probably.

Q. That would make somewhere from the time you have given each season from 10 to 12 times a season?

A. Yes, sir; I was out probably 20 times the first year to see her.

Q. Then, I suppose, a considerable portion of the first year of the summer season you spent on the yacht?

A. I don't think I did.

Q. When you went out upon this yacht would you be gone a whole day?

A. Sometimes a day and sometimes two days and three days; sometimes two hours or three hours.

Q. Give, in your opinion, how many days you think you spent on the yacht the first year when you think you were out sailing.

A. I couldn't tell you. I always went as a guest of Mr. Belden. When I was on Mr. Belden's yacht I was always very careful to listen to the whistles. I have been on other yachts a great many times. I am always so careful to listen to the whistles.

Q. So that you made it a part of your business when you were an invited guest on a yacht to pay particular attention to the whistles?

A. No, sir; I didn't. I made it a part of my pleasure, sir.

Q. On this night in question do you recollect hearing your yacht give a single whistle at any time after you left New York until just before the accident?

A. Yes, sir; a great many of them. All along.

Q. Is there a circumstance of any other single vessel or place on the way from the Battery to the place of this collision that you can identify where there was a whistle given and for what purpose it was given?

A. As we passed these other vessels I believe we blew a whistle every time before he got to them. I have a recollection about it.

I specially paid attention to it when I was upstairs; they always answered the whistle; all that I noticed did.

Q. May there not have been vessels that she blowed at and
196 which did not answer that you did not pay attention to?

A. No, sir; I don't think he ever blew the whistle to anybody on the river that night that I heard and paid attention to that did not answer it. That night we had supper, I guess, about six o'clock. There were at supper four. Supper was served in the saloon. That is below the main deck.

Q. You couldn't see from there out on the river?

A. You can, splendidly. Right there are the bull's-eye lights, as you call them, here.

Q. Did you watch through the bull's-eye lights?

A. Yes, sir; we particularly noticed that night—right through the bull's-eye lights.

Q. Any more particularly that night than any other?

A. Yes; the scenery was very handsome, and it was about sunset, and we were very much pleased with the trip.

Q. Haven't you ever been on the yacht before when you took supper about sunset?

A. I think I have.

Q. Did you then look through the bull's-eye to see the scenery?

A. Always did if I couldn't get the sofa seat on the other side.

Q. How long were you at dinner?

A. I don't think he treated us very well that night, for we were only down there about twenty minutes; maybe twenty-five; it wasn't much of a dinner.

Q. What wasn't made up in dinner, I suppose, was made up in drink?

A. Don't drink very much on Mr. Belden's yacht; possibly we had a little wine that night.

Q. You recollect all those whistles and wouldn't recollect if you had something good to drink?

A. It is such an every-day occurrence with me I don't notice it; it is such a common circumstance.

Q. Did you pay any attention, by looking at your watch or clock or anything like that, to know what time you went down to supper and the length of time you were there?

A. No, sir; I didn't; it wasn't necessary; we generally rang the bells on that yacht at the half hour and hours; I do not recol-
197 lect what hours they had rung the bells on that yacht when I went down to supper; it was about six o'clock when we went to supper.

Q. Were there any bells rung or any notice given when you got through with your dinner to give any indication to you of the length of time you had been at dinner?

A. They were their regular bells—half hour and hour bells.

Q. Were any of these regular or irregular bells rung so that after you got through with your dinner you had any measure of time other than your mere memory now as to how long you had been down to dinner?

A. No, sir; I didn't think there was anything extraordinary that night to make me remember how long I was there. After I got through dinner I went upstairs, I think, as we called it there; I walked forward; I was all over the boat, probably.

Q. Your recollection is when you got up from dinner and came out you walked over the forward part of the boat?

A. My recollection does not carry me out in that; I might have walked to the stern first.

Q. Do you recollect where you went to and what you saw after you came on deck?

A. If I could remember I would tell you; I went upon the deck somewhere.

Q. Did you remain on deck from the time you came on after supper till the collision?

A. No, sir; I don't think I did; I went below again; it might have been just about dusk; I recollect how long I stayed below then—just long enough to get my overcoat; then I came out on deck; I planted myself after I got on deck then in a chair.

Q. Can you tell what part of the boat the chair was in?

A. On the deck, way back about fifteen feet from the stern.

Q. Did you remain there from that time until the collision?

A. I don't generally sit still over ten or fifteen minutes;
198 I would walk up forward and then go back again; I stayed there at that time probably ten or fifteen minutes.

Q. Do you recollect then that you went forward?

A. I don't remember precisely how far; I got up and took a little walk; whether I went all the way to the pilot-house I don't know; that's the first time I got off the chair.

Q. Do you recollect how long you had been sitting there before you heard the one whistle you speak of?

A. About half an hour.

Q. Had you been smoking that cigar all that half hour?

A. Oh, I probably smoked three or four; I was smoking half the time.

Q. And you have no doubt you smoked three or four?

A. I say I might have smoked three or four or probably three or two that evening; I don't keep such close memorandum of what I eat, drink, or smoke.

Q. You don't think it is as important to keep memoranda of that as of what you see and hear, so as to charge your mind with it?

A. Not generally.

Q. Were you sitting over the wheel?

A. I might have been two or three feet off of the centre, but I was very near over the screw.

Q. How far was that back of what is called the "social hall"?

A. I should think it was fifty or sixty feet; I should think so; the social hall is about as high as my head; the deck of the boat where I was sitting, I guess, is about eighteen or nineteen feet wide.

Q. What is about the width of the boat where the social hall is?

A. I think about 22 feet; 22 or 25.

Q. How wide is the gangway on each side of the social hall between that and the rail?

A. Three and a half or four feet, maybe.

Q. That would leave the social hall about twelve or fourteen feet wide?

A. I don't think it is quite as wide as that.

199 Q. What is that social hall used for—to go in and smoke or what?

A. I don't think I ever saw anybody smoking in there.

Q. When you were sitting there who was sitting there with you?

A. Immediately in front of me sat my wife and Mrs. Belden. We were having a conversation.

Q. Have you any idea of what you were conversing about at the time just immediately preceding the accident?

A. No, sir; I wasn't talking; I was listening to what they had to say.

Q. Have you any recollection of what they had to say?

A. Talking about the weather or stars or something; I don't know what it was; I don't remember what they were talking about.

Q. As you were sitting there could you see the bow of the boat?

A. No, sir; not of the Yosemite, nor could any other man.

Q. As you were sitting there, was that the spot from which you saw the steamboat coming down the river?

A. Yes, sir; I was sitting there when I saw the steamboat.

Q. Over your side of the boat did you see the steamboat?

A. It was the left side. The steamboat then seemed to be away from me about a mile when I first saw it. I recollect seeing lights upon the steamboat; I think I saw a white light, and a red light; I think I saw one or two white lights; I will not say which; I saw a white light and the red light.

Q. Is it your recollection that you saw one or two white lights?

A. I saw two lights—a white and a red one. There may have been three or four white lights, for all I know.

Q. All you recollect of seeing was one white light?

A. There may have been more.

Q. Did you keep any particular notice of that light?

A. Yes, sir; I noticed it as it approached me.

Q. Do you mean to say that if you sat at the rear of this social hall, in about the centre of the boat, and your boat was going up the river, that you could look past the corner of that social

200 hall and see the lights on a boat coming down the river a mile off?

A. No, sir; no man can see through it; it was 60 or 70 feet from the social hall. I was behind it.

Q. Wouldn't the angle from where you sat to the left-hand corner of the social hall cut your view off so you couldn't see a steamboat coming down the river a mile off?

A. No, sir; it would not.

Q. In your opinion, how far could you look up the river and look past the corner of the social hall and see a steamboat?

A. As far as the eye can carry.

Q. Did you notice about what course your vessel was sailing on, where she was headed for?

A. Yes; I should say, if I know anything about it, that it was about north. I don't know anything about that portion of it. I should say from what observation I could make that we were sailing about up the channel of the river. I kept my eye upon this vessel from the time I saw her first until I heard the first whistle.

Q. How long do you think you saw her before you heard her first whistle from your boat?

A. I hadn't seen her to pay particular attention to her.

Q. Then your first whistle was what called your attention to her?

A. Yes, sir; I may have been looking the other side of the Yosemite before that. I looked then and observed the light upon that boat. I didn't change my seat. I did not get up when I heard the first whistle. I remained seated at first. I kept my eye upon that light down to the hearing of the second whistle.

Q. How long after that second whistle was blown from your yacht before you got up and made the expression as to why she didn't answer?

A. About as quick as you can get up.

Q. When you stood up could you look over the social hall and see the steamboat above?

A. No, sir; I don't think it was necessary for me to look over the social hall.

Q. The social hall was between you and the bow of your boat?

201 A. I don't mean I couldn't look over it, but I had no occasion to look over it. I was not so high that it would obstruct my view from looking ahead. I think the social hall is a little higher than my head.

Q. It is high enough for a man to stand up in it?

A. It would depend upon what kind of a man you put in there. I might possibly stand up there with my hat off. The bottom of that social hall is the main deck of the yacht.

Q. Is the deck about level from the social hall back to the stern?

A. The deck is level all but about nine feet from the extreme end of the stern, or ten feet maybe; it is a little higher there. I was not sitting on that high part. I believe we are talking about the first whistle now.

Q. No; about the second whistle.

A. At the second whistle I went back on the high part. I saw the steamboat off the port side of the yacht.

Q. How much higher is that eight or nine feet back?

A. I should say 12 or 15 inches.

Q. Did you notice what lights there were upon the steamboat then?

A. They hadn't changed any.

Q. I understood you to say before that you recollected seeing a white light and a red light. Do you mean to say that is all the lights you saw?

A. I saw those two lights. I may have seen the third light. I didn't pay any particular attention to the white light.

Q. Did the whistle from the Vanderbilt, in answer to that second single whistle from your boat, come as quick as ordinarily an answer can be given from one boat to another?

A. No, sir; I don't think so. I think it was longer.

Q. How much longer than ordinarily?

A. About half as long again as it ought to have been, in my estimation, and that is worth nothing.

Q. After you heard that whistle answer, I suppose you went and sat down?

A. You would be very much mistaken if you supposed so. I took my place and never took my eye off of the boat.

202 Q. You were afraid there was going to be a collision?

A. I didn't say so. I kept my eye on the boat from curiosity; nothing else; it was simply to see what it was.

Q. How long had your "curiosity" kept you looking at this boat before you heard two whistles?

A. I should think about 30 or 35 or 40 seconds. A second is an awful short time. I can't calculate within a second. I don't think it was less than 30 seconds, and I don't think it was over 40.

Q. You came to the conclusion there was likelihood of danger when you heard the two whistles from the steamboat?

A. I rather think I did. I knew no man could change his course as quick as that.

Q. In view of that danger, did you change your position at all?

A. Yes, sir; I jumped down and grabbed my wife; I never left my eyes off of the boat at the time; I still could see the boat when I grabbed my wife.

Q. At that time when you kept your eyes on the boat you still saw her off the left-hand side of the boat. Did you keep your eye on the boat and see her off the left-hand side of the yacht until the yacht had given two whistles?

A. Certainly.

Q. When you got down and had hold of your wife was it during that period of time when you saw the broadside of the Vanderbilt?

A. No, sir; I saw the broadside first, before I jumped down.

Q. Did you continue to see the Vanderbilt or any part of her up to the time of hearing the crash of the collision?

A. Yes, sir; I saw it off the left-hand side of the yacht and not over the social hall.

Q. You say that the last two whistles from the yacht were about simultaneous with the time of the two vessels striking?

A. The first whistle was rather quick, comparatively short whistle, and the second one was still shorter, but before he forwarded his second whistle he had struck the Vanderbilt just at the same time.

203 Up to that time I don't think I had heard any bells on the yacht to the engineer.

Q. Is that merely "thinking," or have you any recollection about it?

A. Not that I recollect.

Q. Have you any recollection of hearing any bells on the yacht until after the collision?

A. I heard bells just after we struck her; just as soon as you can calculate that bells can ring after the whistle blows. I heard the pilot swear that he blew the last whistle and then pulled the bell-pull right off. It is not from hearing his testimony that fixes that so strongly in my mind; it is from my independent recollection that I remember that just about the same instant of time, and really before the last whistle was fully stopped, the collision came and at that instant I heard the bell. I do not recollect how many bells I heard on my boat.

Q. I suppose your boat had got slick through the Vanderbilt before you heard any bells on the Vanderbilt?

A. No, sir.

Q. Where were you when you heard them on the Vanderbilt?

A. Just where I was when I heard the bells on the Yosemite. I heard the whole thing together.

Q. You think there can't be any confusion from the position of your boat and this noise obstructing you from hearing the bells on the Vanderbilt?

A. I heard the bells on the Vanderbilt a little before the whistles of the Yosemite; just as fast as you can ring a bell and whistle and ring a bell afterwards.

Q. How many feet off from the Vanderbilt were you when you heard those bells on the Vanderbilt?

A. About as far as the stern of the Vanderbilt to the stern of the Yosemite at right angles. Those two vessels were just then about at right angles. I could hear the motion of the wheels of the Vanderbilt.

Q. Did you hear the motion of her wheels at any time stop?

A. I think we stopped or that stopped when we went out on the other side.

204 Q. And not before?

A. I don't know. I couldn't hear the wheels of the other boat when we were crashing through her. Just as we struck the bow I heard the wheels.

Q. From the time you first heard the wheels of the Vanderbilt until you crashed through her, did you hear any suspension of the noise of the Vanderbilt's wheels—that they were apparently stopped?

A. You ask me from the first I heard the wheels of the Vanderbilt. How could I hear them if they were stopped?

Q. You say you heard the wheels of the Vanderbilt?

A. Yes, sir.

Q. From the time you first heard them up to the time of the actual collision, had the Vanderbilt's wheels stopped?

A. No, sir; not that I know of.

Q. When you heard the bells on the Vanderbilt was that before the noise of the crash of the collision or was it during the crash of the collision?

A. About as soon after the collision as you can make it.

Q. Which came first, the collision or the bells?

A. I can't really say as to the second; the minute I heard the crash I noticed the bells. They may have been ringing for half an hour.

Q. The crash came before the bells rung?

A. I heard the bells just before the crash. Here is the Vanderbilt and here is the Yosemite, and when they were in that position I heard the bells.

Q. Was that before the crash came?

A. Probably the sixteenth part of a second if you want to get it down so fine.

Q. Was it before the collision that it was the sixteenth of a second before?

A. Yes, sir.

Q. After you ran through the Vanderbilt, did you hear any further bells on the yacht?

A. Not to my recollection; no, I don't remember; I was not paying any attention to bells after that; then I stood still until we had cleared her.

Q. How long did it take to clear her?

A. About as long as it would take for a boat to strike her
205 and stagger her and reel and wiggle through and cut her clean in half.

Q. Did it slacken your boat so it materially stopped her speed?

A. No, sir; not materially. It stopped her for an instant, but it went right along. It was a very violent jar. After we got clear of her I went forward; I went right to the gangway.

Q. The last time you had been forward who did you see upon the deck of your boat?

A. Mr. Hinckley, Mr. Belden, the captain, and the pilot. At that time I went into the pilot-house. I was in the pilot-house about three or four minutes. I thought it wasn't any place for me that night.

Q. Why not?

A. There was a new pilot there. I said, "Hello; we have another pilot here."

Q. Was that the first you noticed there was a new pilot aboard?

A. Oh, no. Common decency told me I ought to keep out. That was not the first time that afternoon I was in the pilot-house. Common decency would have prevented me from going in the second time.

Q. How far were the ladies sitting from you at the time you were up upon this rear part of the boat which is about 16 inches above the main deck?

A. About four and a half feet; maybe five.

Q. Then you were sitting, in fact, nearly as close as you could to this rise in the deck?

A. Yes; comfortably close, so people could walk around behind us if they wanted to. The elevated part of the deck was about nine feet, I should think.

Q. The whole distance from the stern of the boat to the rear part of the social hall was about 40 feet?

A. I said I thought it was 60 feet from the social hall to where they sat.

Q. Was the rear mast back of the social hall?

A. I don't think it is; it may be. There is one back and one forward. I was facing the ladies; I sat facing the bow of the boat.

Q. I take it they sat with their faces looking to the stern of the boat?

206 A. They were looking towards the bow, and I was directly behind them; I sat behind them. We were all three looking the same way.

Q. Were you engaged in conversation with them at all or simply listening to them?

A. During the evening we spoke to one another.

Q. Was that your situation for as long as 10 or 15 minutes before you heard any of these whistles?

A. I said half an hour.

Q. Did you change position within 10 or 15 minutes before that and all three sit looking towards the bow of the boat?

A. I made no radical change. I might have crossed one leg over the other.

Redirect examination by Mr. BENEDICT:

I have noticed the lights on the Yosemite; I have often seen them lit. I have seen the lights on other vessels.

Q. How did the side lights on the Yosemite compare with the lights on other vessels?

A. As bright as any I ever saw and as handsome.

Q. How large were the lanterns?

A. I should say about that size (indicating). They were elegant lights. The mast light was about as brilliant as the ordinary lights.

Q. How far could the side lights be seen in an ordinary dark night?

A. I never got off to see, but I should think—I noticed the lights on this night both before and after the collision.

Q. How were they burning upon this night?

A. I thought they were about as handsome as they ever were.

207 Supreme Court.

EMORY A. CHASE *et al.*
vs.
WILLIAM BELDEN.

It is hereby stipulated that the deposition of Emma R. Belden be taken before Edward G. Benedict, a notary public, at No. 841 Fifth avenue, in the city of New York, at 10 o'clock a. m., on the 15th of April, 1884, and that said deposition, when taken, may be read on any trial of this cause subject to all legal exceptions except as to mode of taking, but said witness is to attend on the trial to be ex-

amined if she is not prevented by ill health or other sufficient cause. Said deposition may be retained by defendant's attorneys without filing.

HALLOCK, JENNINGS & CHASE.
Plaintiffs' Attorneys.

Supreme Court, Greene County.

EMORY A. CHASE *et al.*, Executors, &c.,
vs.
WILLIAM BELDEN.

Deposition of Mrs. William Belden, taken pursuant to annexed consent the 15th of April, 1884.

Mrs. BELDEN, being duly sworn, says:

208 My name is Emma R. Belden; I am the wife of Mr. Belden, the defendant in suit; I was on board the yacht Yosemite at the time of the collision with the Vanderbilt on or about the 14th of July, '82; I was sitting quite aft; quite to the starboard; very near the rail.

Q. How much experience have you had in sailing, Mrs. Belden?

A. Well, we have had a yacht for seven years, and I lived on the yacht Yosemite at one time for four weeks; I have sailed on her repeatedly at other times.

Q. Who was with you on the deck of the Yosemite?

A. Mr. and Mrs. Haines.

Q. Were you all sitting or standing?

A. Sitting.

Q. What was it that first attracted your attention?

A. The one whistle of the Yosemite.

Q. Why was it that your attention was attracted by the whistle?

A. Because I always was on the alert; because I always listened to the whistle with a great deal of interest. Her whistle always attracted my attention; always.

Q. Did you notice whether that whistle was answered?

A. I did notice; it was not.

Q. Do you remember whether you looked forward?

A. I don't think I did.

Q. From where you sat what was there, if anything, to interfere with your view forward?

A. Social hall, the houses on the deck; the social hall, which is a house on deck, and that is so high I couldn't look over it.

Q. What happened next after the whistle that you heard?

A. The Yosemite gave another whistle.

Q. About how long a time intervened between the two whistles of the Yosemite?

A. I don't think I could tell you just the time, but it was about the usual time she waited before she received an answer to a whistle.

Q. And what occurred after that second whistle?

A. Mr. Haines made a remark, "I wonder why that thing
209 doesn't answer our whistle." (Objection taken on part of plaintiff: (1) Immaterial and irrelevant, and (2) a conversation between Mr. Haines and person sitting with him is not competent evidence, being the declaration of a third party.) Then I said, "There she blows," at that moment hearing the whistle. (Same objection.)

Q. Hearing what whistle?

A. The whistle from the boat approaching us—one whistle—answer to ours.

Q. What occurred after this?

A. In about 3 to 5 minutes—I can't be sure of the time—Mr. Haines jumped to his feet saying, "What is this crossing our bow?" At that moment I saw ahead of us an immense boat crossing our bow. I did not see it till he spoke, as I was looking at him and he was looking right ahead. I think in about half a moment the crash came.

Q. What did you do after the crash?

A. I went to the port side of the vessel—in fact, was almost thrown there; then to the starboard side to see if I could lower the boat. Almost immediately one of the crew came running aft on the starboard side, seemingly very much frightened. I put my arms out and said, "Stop! lower this boat at once!" He commenced to do so when another sailor came aft. I ordered him to assist in lowering the boat, to lash it to the gangway and stay there till they got orders from me to leave.

Q. Did they do so?

A. They did so.

Q. Any one else come aft?

A. At that time after standing a little time at the gangway myself—a minute or two—Mr. Belden came aft, and almost immediately officers and crew, etc., and I gave no further directions.

Q. Did you see the people on the Vanderbilt after they came on board?

A. Yes, sir.

Q. Do you remember hearing anything said by any of them in relation to the light of the Yosemite?

A. Yes.

Q. By whom?

A. The colored woman.

210 Q. And when was it and how long after they came on board?

A. It was aft on deck, not very long after they came on board.

Plaintiffs' counsel objects on the ground that the declarations of this colored woman are not binding on the owners or officers in charge of the Vanderbilt, and also hearsay. Objection sustained. Defendant excepts.

Q. Please repeat what you heard said.

(Objected to on ground that the declarations of this colored woman are not binding upon the owner, officers, or persons in charge of the Vanderbilt.)

A. This colored woman said, "I see the lights a long way off," and said, "Ain't them showy lights?" which I heard her say twice.

Q. To whom did she speak?

A. To me and possibly Mrs. Haines. She said it to me. I was talking to her.

Cross-examination by Mr. CANTINE:

Q. What time of day was it when you got on the yacht of the day of this accident?

A. I don't remember.

Q. Do you recollect whether it was forenoon or afternoon?

A. I couldn't tell you.

Q. Do you recollect the place where it was where you started from on that afternoon?

A. I started from my home at City island when I got on the yacht.

Q. Did you stop at New York on the way?

A. We must have done so because we took Mr. and Mrs. Haines on board.

Q. Did you make any stop in going up the river before the collision?

A. No, sir; not that I remember.

Q. Do you recollect how far up the river you had got when darkness came?

A. I remember at Cornwall Mr. Belden asked me if I didn't think we had better anchor for the night, saying that we would reach Catskill about 11 o'clock. I told him I thought we had better go on. That's all I remember about the time.

211 Q. Was it then dark?

A. I am not sure, but I think it was. Might have been twilight, because in summer it's pretty late before it gets right dark.

Q. Did you take supper on board of the yacht before the collision?

A. Yes, sir.

Q. Do you recollect about the time that was?

A. We dined usually about 6 o'clock, and I assume it was our usual hour. I know no reason why we dined late.

Q. Do you recollect how long you had been sitting aft of the social hall before the collision?

A. I don't know what time we sat down there.

Q. Do you recollect of being at any place on the deck of the boat other than that where you sat at the time of the collision?

A. No.

Q. How long before the collision had you seen Mr. Belden?

A. It must have been some time. We three were sitting aft quite awhile. He went forward. I mean by "us three" Mr. and Mrs. Haines and myself. I would like to say here that it was Mr. Belden's habit when we were running at night to stay forward.

Q. Did you see any of the officers or crew of the boat aft while you, Mr. and Mrs. Haines sat there before the collision?

A. I don't particularly recall them. The binnacle was aft, and the captain often came there, but I don't recall whether he did then or not.

Q. Do you know if the watch had been set for the night—that is, the change of crew?

A. No, sir; I don't.

Q. When you seen the vessel crossing the bow of the yacht and you stepped to the side of the boat what persons did you observe on the deck of the yacht?

A. In the first place, I didn't step to the side till after the collision. The shock threw me to the side. I saw no one but Mr. and Mrs. Haines.

Q. When you went to lower the boat was you not then in a position to see forward on the yacht?

A. Well, I didn't go to lower the boat. I went to see if I
212 could lower it, and I wasn't looking forward. Remember the deck is covered with houses, and if people are way forward you could not see them nor on a dark night like that about ten o'clock. I wasn't looking.

Q. You didn't notice anybody except those that were aft?

A. I didn't see any one except those that were aft.

Q. You spoke of a sailor coming to where you was. Do you recollect his name?

A. No, sir; I didn't know the name of any of the crew except the officers.

Q. At the time they began to lower the boat how many persons did you see on the deck?

A. Only those aft. Mr. Belden and none of the officers came aft till the boat was aft and at the gangway. Two sailors lowered the boat and got it at the gangway on the starboard side.

Q. And that was after the collision?

A. Yes, sir.

Q. Did you notice the Esopus light when you passed it?

A. No; might have noticed it; I don't remember now.

Q. Then I assume you have no recollection whether you had passed the Esopus light before any whistles were given?

A. I don't remember anything about the light.

Q. From where you sat could you hear bells if they were given from the pilot to the engineer?

A. I don't think I could.

Q. Do you have any recollection whether you did hear any bells?

A. I have no recollection about hearing bells. I am not sure you can hear them above deck at that point; you can below deck at that point.

Q. As late in the evening as it was at the time of this collision, from your experience in being on this yacht about how many men would there be upon the deck in charge of the vessel?

A. I don't think I could tell you exactly, but if we were going to

anchor for the night all hands would be up till we did anchor; certainly all the officers.

213 Q. When you say "certainly all the officers," you would exclude those in charge of the engine?

A. Yes; I meant the proper officers to be on deck.

Redirect:

Q. Were you sailor enough to understand what the single whistle meant?

A. Yes, sir.

Q. Do you remember to have heard any whistles before the collision except the two single whistles from the Yosemite and the one single whistle from the Vanderbilt?

A. No, sir.

Recross:

Q. Where was it on the vessel that Mr. Belden suggested to you that you had better anchor for the night?

A. It was aft, and we had sat aft from that time to the time of the collision.

Q. I suppose while you were aft you and Mr. and Mrs. Haines were engaged in conversation substantially all the while?

A. Yes, sir.

Q. Can you tell the number of persons that came to the gangway when the boat was there?

A. No; I can't.

EMMA R. BELDEN.

Subscribed and sworn to before me this 15th day of April, 1884.

EDW. G. BENEDICT,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

WILLIAM BELDEN sworn for himself and testified:

Examined by Mr. BENEDICT:

I am the defendant in this action. I am nearly 44 years old. I was born in Marlboro', in this county. I reside now in New York city and have since 1852, in the early part of the year. I was the owner of the Yosemite. I owned her about three years. I owned several yachts before.

214 Q. What experience have you had as a navigator?

A. I have had a very considerable experience on the Hudson, and Norfolk, in Virginia, and Halifax, and further to the east than Halifax—to the north of the St. Lawrence.

Q. What of the rivers of the Atlantic have you been up with her or other yachts?

A. I have been up the Providence river, I think it is called; at any rate it is a narrow river that sets up from Narragansett bay to Providence. I have been up the Thames to New London, and up the Hudson quite often as far as Poughkeepsie; up the Delaware;

also the York and James rivers. I have been upon these rivers in the night-time. I have been on all of them in the night.

Q. Do you know what the draft of the Yosemite was at the time in question?

A. I think it was a little over 13 astern and about 11 feet forward. She was light, not having very much coal in.

Q. What experience have you had yourself in sailing a vessel?

A. I have had a great deal before I had the Yosemite built. I steered a vessel a great deal before that. I never steered her very much, except a few minutes at a time, possibly.

Q. Are you familiar with the working and handling of steam vessels?

A. Very familiar, sir. I have run night and morning in the East river from City island to the Battery, which I consider the most difficult piece of navigation that we have on our coast. I ran that for years—that is, through Hell Gate. I stood at the wheel very often.

Q. Did you ever take out a master's license?

A. No, sir; I was entitled according to law until recently to have been master, if I owned a yacht, without a license. The owner of a steam-yacht, according to the custom-house regulation, was entitled to be a master of his own yacht until the last two years, I think, so that I didn't require a license. I should have got one out at that time if it had been necessary. When I got the Yosemite I didn't care to. I sold the Yosemite on the 1st of August last to
215 Mr. Roach. I was on board of her at the time of this collision.

Q. What time did you leave New York on that occasion?

A. We left New York and were on our way before half past 3 o'clock—that is, we were making our way up the North river just before half past 3 o'clock.

Q. From that time how much of the time were you on deck yourself?

A. I was on deck with the exception of possibly 20 minutes; perhaps not so long as that. All told, I wasn't off the deck 20 minutes. I was on the after deck till we got to West Point, most of the time. I got my dinner or supper that night about six o'clock; after that time I was forward until the time of the collision. We did not stop at any time on the way up.

Q. Do you remember this conversation spoken of with Mr. Craig, as to stopping?

A. Yes; I know what occurred; that was between Milton landing and Poughkeepsie.

Q. What was the question that was up at that time?

A. Whether I should anchor at Poughkeepsie and go on early in the morning or whether I should go to Catskill that night. The engine was slowed at that time a very little. I told the engineer through the tube to slow his speed until I made up my mind what I would do.

Q. How long was that slowing?

A. It might have been done a minute or a minute and a half, but we didn't stop the engine.

Q. Was there any other time when the engine was slowed or stopped, to your knowledge?

A. There was no other time after we started. I had not known Craig before. It was a very fine night. I don't think that I could pick out a night that was better than that was for seeing the lights anywhere.

Q. What do you say as to the character of the lights of the Yosemite?

A. I think that they are the best lights I have ever seen. I never saw better, certainly. I have seen a good many yachts. I am very familiar with lights.

216 Q. How far off could those side lights be seen that night?

A. From my residence at the sound, I see lights constantly, aside from my familiarity with yachts. The red light could be seen three miles, very near if not quite; certainly two and a half; and the green light can never be seen so far on a vessel as the port light. The green could have been seen on that night without trouble two miles.

Q. And the mast-head light could have been seen how far?

A. I think that mast-head light, on that night, could have been seen 10 miles. I feel very certain of it. The mast-head light was a light of very great power. It was a much more powerful light than these lights in these river light-houses. It cast a clear flame.

Q. Tell, in your own way, the story of what occurred in reference to this collision.

A. I never came up the Hudson above Newburgh without watching the west bank, especially in this county, having been born here, so that I never take my eyes off of this shore in coming along. On the night in question objects were very distinct. It was dark on the water, but anything against the horizon, especially against the western sky, seemed to be set out very brightly. There were a few clouds and quite a number of stars, but the starlight was not so light and bright. The light reflected in all the little hamlets along the shore, and I was trying to see as many as possible. We passed Poughkeepsie after dark. I saw Esopus light a good while before we reached it. I was on the starboard side of the pilot-house and was listening particularly to the explanations that Captain Craig was giving to Captain Eldridge, constantly, as to our course or compass, and I took considerable interest in it and noticed all these points at the time he told Captain Eldridge. I was probably six or seven feet from Captain Craig and not more than four feet from Captain Eldridge. The moment that I got the Esopus light in a line with some lights that I saw
217 further up the river I saw a steamer's light coming. She appeared to me then to be some—well, I say certain some—two and a half miles away. Well, very nearly that; so far off that a whistle would not be blown. After we got around the Esopus light—that is, the light being more than abeam—I saw Captain Craig and Captain Eldridge—both saw the steamer—and they were

about to blow, and so I made no remark. The lookout called their attention to the fact that a steamer was coming in sight. Shortly after leaving the Esopus light (I doubt whether we had got straightened on the course up the river fairly, but we had got past it) one whistle was blown from the Yosemite. I kept my eyes upon this boat, supposing it to be the night boat, and watched her with considerable interest as she approached. No answer was given, and I thought that very strange, for I could see their lights very clearly. I saw their port lights (the red light) with great distinctness, and I knew from the fact that I could see that port light so well that we must be nearing that vessel and that they ought to reply. I said nothing, however.

Q. Were you still on the starboard side of the Yosemite?

A. Yes; but the pilot-house is circular in front and by standing a little forward of the entrance we can see all around perfectly. A second whistle was blown from the Yosemite after a space between the two of probably six or eight seconds.

Q. When you first saw her what light did you see?

A. I am not certain about distinguishing anything but the lights of the steamer. I saw the white lights. My impression is that I didn't make out their signal lights as soon as I saw that there was a steamer coming, because I saw her at a long distance.

Q. You said you saw the red light. Had you seen the green light before?

A. I don't recollect seeing the green light. There was a space of probably six to eight seconds between our first whistle that was not answered and the second one we gave. Then my atten-
218 tion was arrested at once from the fact that they didn't blow their answer to the second whistle quite as promptly as I should have done or as I should have expected would have been done under the circumstances, but still it came. I knew that our whistle on the Hudson river would echo and re-echo, being a whistle of very great power, and would be carried on the water to the banks and reverberate, and you can hear it echo up and down the stream (after you have pulled hard once) for a good while, and I wondered why they didn't answer the first and they were slow about answering the second. I watched that boat with peculiar interest, for I mistrusted that she could not be properly officered from the fact that she didn't answer as she ought to. I did not take my eyes off of her from that moment. The boats came on and I saw that the relative courses were proper ones to pass. I noticed that just after Capt. Craig gave his whistle he gave the boat such a direction by sheering as would make her course a little towards the Rhinebeck bluff. I am not certain whether he waited for their answer before he altered the course of the boat slightly, but I remember it being done, for I was watching the courses and I wanted to see how far he had canted her a little more to the eastward without being obliged to back again, for I knew he was putting himself out to give her plenty of sea room. The boats continued to approach each other and I felt certain then we were going to pass with plenty of room when I supposed, according to the run of the river, the Vanderbilt

was very near abeam—that is, would in a moment or two more have cleared us entirely—when I suddenly saw her sheer and I heard two whistles. We couldn't then have been more than, perhaps, 200 feet apart, or 250. I saw the collision was inevitable and that there was no possible way to avoid it. There was not time for him to sheer back again and there wasn't time for us to stop, and we couldn't possibly alter our course. I supposed it was the Albany
219 night boat and I feared a dreadful loss of life, for I knew we must go through that boat and no human power could prevent it. I saw Capt. Craig grab the whistle rope; he made some jerks at it and then grabbed the engineer's bell to reverse, and at the same time, right under her bow, I heard the bells of the Vanderbilt—the engineer's bells of the Vanderbilt. We were right on her then and we crashed into her.

Cross-examined by Mr. CANTINE:

Q. Were you ever a licensed officer?

A. That's a pretty broad question.

Q. Were you ever a licensed officer on board of a steam vessel?

A. Well, I think I can answer that in the affirmative. On the steam-yacht Promise. I owned her.

Q. Were you licensed in this way—that you understood the owners of the yacht, according as you understood the regulations, were entitled to be masters of them?

A. Yes; I know they were.

Q. Were you ever a licensed officer, other than in the way you have spoken, on board the yacht Promise?

A. The reason I hesitate in answering is that I think in my very papers I was licensed specifically; but I shall have to refer to them to give a yes or no answer to that. My best recollection is that I was legally and lawfully a pilot.

Q. But your legal and lawful license as a pilot of that vessel would come, as you understand it, by virtue of being the owner of that yacht?

A. Yes, sir; the law gave me that right. I never went before the steamboat inspectors and was never examined by the steamboat inspectors for the purpose of getting a license.

Q. While you have been on the yacht you have named did you ever yourself assume to take the running of the yacht?

A. Yes, sir; repeatedly and a great many occasions, both inland and at sea.

Q. Without having a licensed master, the pilot standing beside you in the pilot-house?

220 A. On two occasions I took the sole command of the Yosemite and obliged all the officers to obey my orders. Those two occasions were during the time I made a trip in her to Labrador.

Q. For how long a period of time was it that you took the general charge and compelled the officer to obey you?

A. For about 13 hours continuously off Block island—in July or

August, 1881—was one occasion; that was on our return from Labrador. It was on that trip to Labrador when both of these times occurred.

Q. Were the officers sick so they couldn't attend to their duty?

A. There was insubordination. It was subordination of the crew and the officers on board of the boat to the master of the boat. I knew I was able to quell insubordination.

Q. And it was what you call——

A. (Interrupting.) Insubordination, and what I thought at the time and still believe to have been incapacity on the part of the officers.

Q. According to all known usages of the sea, isn't the master of the vessel the person that has the right to control and direct the conduct of the persons on board of the ship when she is actually sailing, and even if the owner of the ship should be on board?

A. I don't think he is in the case of a steam-yacht. I want to state that this was at a time when Captain Eldridge was not in my employ.

Q. Outside of these two occasions you never took charge of the navigation of a vessel from out of the hands of the master or pilot in charge?

A. Well, I have instanced two occasions as being ones where I felt it an absolute necessity. I very frequently, and it has been my constant habit, to give directions as to our course and which way I wanted to go and what preferences I had and whether I would go sometimes to the port or starboard of a vessel. I have never been employed upon any vessel, either sailing or steam vessel, in my lifetime.

221 Q. Have you ever done anything as to the navigation of any vessel other than such things as you have named, upon the yachts that were owned or run by you?

A. Yes, sir; I have often had steam-yachts that I steered; not my own, but others.

Q. On such occasions would they have a pilot at the wheel also?

A. He might have been there. It was not necessary for him to have been. He was not there as a matter of fact all the time.

Q. I want to know whether you went and took the wheel to steer as a mere experimental thing or whether you went there to take the charge of the boat as an experienced man.

A. Oh, I was in charge at the time.

Q. And put in charge by the owner of these other yachts you were on?

A. Well, yes.

Q. Have you ever been on yachts much time except upon those you have owned and run yourself?

A. I have been on yachts a great deal.

Q. About how long ago was it when your yachting experience began and you began to go on yachts?

A. Well, I presume ten years.

Q. During that ten years how much of the time did you either own or have a yacht under your control by hire or charge?

A. Well, for several years, for probably five months in the year, I ran daily from City island, which is off Stepping Stone light, to the foot of Wall street night and morning. That was on my own yacht or those belonging to others. That is conceded to be generally about the most difficult navigation we have got anywhere. During that time I lived at City island and did business in New York, and it was the way I traveled from my residence to my place of business and back. I often went in other directions, but that was at night or on Sundays or in the afternoon.

Q. During that time there was a licensed pilot on board of the yacht?

A. There was not always nor a licensed master always.

Q. When there was not, do you mean to say you went to
222 the wheel in the pilot-house and navigated the vessel from New York to City island or the other way?

A. I did very often.

Q. And without any licensed master or pilot on board of the boat?

A. Well, if by that you mean somebody who passed this special examination by the inspectors, then there was no such licensed pilot aboard.

Q. If there was not such a one, was there a person as an experienced man who had been in the habit of going out and steering vessels besides you; was there such a man on board?

A. Not always. I considered myself experienced.

Redirect examination by Mr. BENEDICT:

Q. Now proceed.

A. From the time the Vanderbilt sheered I saw and knew that a collision was inevitable; that we must go through. There was no time nor place for her to get out of the way nor for us to take any course whatever to avoid her. It was a question of where we would strike, and that is all. The time that it takes to stop the Yosemite or to alter her course, though she steers very promptly, and short as it is (that is, short as the time necessary would be), was not sufficient to do anything there at all, and I saw that it didn't make any difference to calculate they could sheer their boat or steer it, there we were, and she was a certain length and our boat was a certain length and we must come together, for we were nearer together than our united lengths very evidently, and both under way, and it would be necessary for us both to stop. I don't care if one stopped; that wasn't enough. We were so long that we were bound to strike. The Yosemite was heavy—that is, she displaced a good deal of water—and was one of considerable dead weight herself, and this impetus once given, once under way, must take time to stop. I have had a great deal of experience in stopping the Yosemite, and I say decidedly that no man, be the engineer never so prompt, can stop that boat
in a 100 feet if she is going 12 miles an hour with flood
223 tide. I don't care if the engineer has known beforehand that it is going to be done and he is going to try to do it; he has got to shut off the steam and work his reversing carefully, and by

the time that screw gets hold of that water, by George, she will be too far ahead to stop her dead still, so as to stop all way in 100 feet. Here we were coming right on and so was this boat. It made no difference if they had sheered afterwards, we would have struck her possibly in a little different place. To come together was inevitable. So the accident didn't turn out to be fraught with loss of life, as I felt sure it would be, because I thought it was the Albany night boat.

Q. How far from the stem did you strike the Charlotte Vanderbilt's stem?

A. Close to sixty feet.

Q. She was 207 feet long?

A. Then it probably would not have been over fifty-five feet; I want to add, if you please, that I saw this boat coming here, and I wondered there was no lookout forward; I could see her whole forward deck and there was nobody upon it.

Q. So with that length of boat, in order to have got under her stern, the Yosemite would have had to be swung at least 150 feet further to the westward than her bow was at the time she struck?

A. That is so, but of course that would all have depended upon exactly when she stopped; a side-wheel steamer acts very promptly and we might have had to have gone still further.

Q. Her stem would have been at least 150 feet further to the westward in order to have gone clear?

A. Yes; 200 feet, I should say; if we had gone that way she was beginning to go astern, and she would have gained some on going astern; suppose she had got under headway astern, we could not got by her on that side.

Q. Your opinion is that the only effect of any change of position would have been that you would have struck her in a different position?

224 A. Yes, sir; to strike her was inevitable; suppose we had turned to go, if we had had time, then we would have given her a little more time and she would have got on a little more headway going back, and then I think, perhaps, we might have 30 or 50 feet, but we would have had to go a good 200 feet to get clear of her; while going ahead 200 feet we can't change our course 200 feet; we couldn't change around as quick as that.

By Mr. BENEDICT:

Q. You know the fact that the boats were got out and everybody saved?

A. Yes, sir; I will state why I am certain our lights were in excellent condition: I was standing just a little forward of the pilothouse door; we struck this boat and went through her, and I suppose it would have torn our port side a good deal; I didn't see how we could go through it without doing us terrible damage; our very large boats hung on the davits way over the side, probably projecting seven or eight feet, and maybe more; as quick as we got by, after noticing the bow of the Vanderbilt on the right, which attracted my attention, that it was cut off, I went over on the port

side to see what had been carried away, for I supposed she had carried away our boats and port light, and I looked down the port side and there was that bright red light of ours and everything intact.

Q. How high from the water was that red light?

A. Just about twenty and a half feet.

Q. There was no difficulty with reference to that light at that time?

A. No, sir; it was in perfect condition; I suppose it must have been carried away, because I thought when we cut into the Vanderbilt their upper deck had fallen into or against it, but it didn't.

Recross-examination by Mr. CANTINE:

Q. You say you run a number of times up as far as Poughkeepsie in the night-time with lights?

A. Yes, sir.

225 Q. How many times would you put it that you ran up as far as Poughkeepsie?

A. I like to run as far as Marlboro' and Milton landing; I don't care about going up farther than that, so it might not have been exactly Poughkeepsie I went to.

Q. You would run up to there and lay until morning?

A. I would go back to Cornwall and anchor at night—that is, I generally did.

Q. How much of that journey coming up there and going back to Cornwall to land would be made in the night-time, and how much in the daytime?

A. It would be dark generally shortly after we passed Peekskill; we would have to set the lights generally there.

Q. You generally ran up to Cornwall and anchored?

A. No, sir; I would run up to this side of Low point and then turn around and go back.

Q. That would get you to your anchoring place after going somewhere about thirty miles?

A. It would be more than that; perhaps I had better say to New Hamburgh instead of Low point; I meant this side of Low point; I suppose it would be the best part of fifty miles; I think I have done that as often as four times.

Q. How many times do you say you did it?

A. I have been in the habit of doing it a great deal for the last few years, since I have been yachting with the Yosemite; Captain Eldridge has not been captain the whole time; a man named John H. Avery has been captain; he was on her from 1880 or 1881 to the time Captain Eldridge was made master; I don't know when that was; I naturally ran the boat more when I first got her than I did afterward; she was new, and we generally use something that is new oftener than we do when we get accustomed to it.

Q. When you first discovered the lights upon this steamboat, if I understand you right, your yacht was below the Esopus light when you first made out you saw a steamer coming down the river?

A. Yes, sir; I am sure I saw her when the Esopus light would have been almost in range with her.

226 Q. Upon reflection, have you any distinct recollection of what lights you saw upon the steamboat?

A. I saw that a steamboat was coming, but I can't call to mind what lights they were; I saw a vessel coming which I took for granted was a steamboat, and I think at that time the Esopus light cut us out, and then we were rounding.

Q. After you got around the light do you recollect what light you saw?

A. Then I saw the port or red light; I do not remember whether I saw one or two white lights; I do remember of seeing a white light there.

Q. But you are not certain whether it was one or two?

A. I knew I saw the port side of the steamer.

Q. Seeing the port side of the steamer you might see both bright lights?

A. Yes, sir; I might.

Q. My question was if you recollected whether when you discovered the red light you saw both of the white lights.

A. That I don't remember; I should not have noticed that particularly; from my not seeing the green light and my seeing any white light, whether one or two, and seeing the red light, then I know where she is.

Q. Did you at any time until the boat made the rank sheer across the bow, as you speak of, see the green light upon this steamboat?

A. I did not.

Q. And I understand you to say that from the time you first discovered the light on this steamboat until she sheered right across your bow you had stood right substantially in front of your pilot-house so that nothing obstructed your view?

A. I had a perfectly clear view.

Q. How far was your lookout standing from you?

A. The lookout was about at the capstan.

Q. How many feet forward of where you were would that be?

A. Twenty to twenty-five feet; fully that.

Q. You were pretty near the centre of your boat?

A. Nowheres near it.

227 Q. How far were you from the starboard rail?

A. Three feet.

Q. Did the lookout stand about in the centre of the boat or was he walking about?

A. At the time of the collision or just before it, when we were rounding Esopus light, I remember he was leaning against the capstan, talking to somebody there about the river.

Q. From where you stood and keeping a close observation upon this vessel, if you couldn't see the green light on the Vanderbilt before she made the rank sheer, do you think from where the pilot stood he could have seen the green light on the Vanderbilt before she made the rank sheer?

A. Well, that depends upon how soon he saw that boat. He might have seen her at a very considerable distance. Those lookouts,

especially this man, seemed to have splendid eyesight. I can see how he might have seen that boat way up the river from my experience with him. I have good eyesight, very good, but nothing like as good as he has.

Q. From where you stood and where he stood were you not substantially in equally good positions to see the green light as soon as it would appear, no matter which one noticed it first?

A. Virtually in the same plane.

Q. Did you notice whether this steamboat coming down apparently changed her course from the time you first observed her until she made this rank sheer across your bow?

A. I observed her first, if you will recall, before she was shut out by Esopus light, and we were rather turning in the river, and her apparent position would necessarily have changed a little.

Q. After you turned Esopus light did she appear to change her course any up to the time she made the rank sheer across your bow?

A. No, sir; she evidently kept it steady.

Q. If I understood you right, when this rank sheer was made this vessel was substantially about 200 feet further to the west in
228 the channel of the river than where your boat was?

A. It was fully that.

Q. And she was substantially so that she was down about past your boat?

A. Yes, sir; if I had waited two seconds—certainly if I had waited three seconds—he would have gone under own stern. I am perfectly clear on that—very, indeed.

Q. So the most of what he did from the time he made the sheer was not to get down the river, but to get across the river across your bow?

A. That was all there was done.

Q. That was all there was of it?

A. Yes, sir; if the boats each had been going 10 miles an hour they would have gone 30 feet per second.

—. By taking this sheer there was then only the speed of one boat, for the other was crossing the track of the other?

A. Well, that is true in a measure, but still perhaps wouldn't bear close reflection. Now, two objects approaching right in a parallel direction, when one changes its course—they are still approaching each other and when you allow for the tide wave, why, it is hard to determine. Suppose these boats were approaching each other and would have passed on their due course, say, 250 feet apart. Now, let one of them change their course towards the other, and I can see they would not go quite so quickly, because this boat, in place of going on—this boat is diverging from the straight line, and they do not get to a straight point quite so soon.

Q. How high is the pilot-house above the deck of the Yosemite?

A. Well, the floor is on a level with the deck. Possibly the floor of the pilot-house may be two or three inches higher than the deck; then the deck has a "round" which makes it higher in the middle of the vessel than at the sides. This vessel has a sheer.

Q. Your pilots didn't have any lights in the pilot-house?

A. No, sir; excepting the binnacle. There never is any there.

229 Q. The binnacle light is covered except when they want to look at the course?

A. It is always covered and can only shine into the compass box; it can't throw any light anywheres else unless you take it out; no light was taken out that night.

Q. Wasn't that a pretty dark night?

A. It was a night where there were a few floating clouds, just enough to keep it from being bright starlight.

Q. Your attention was directed to this steamboat ahead; you were watching that closely; you were fearful there would be a collision, and your mind and eyes were on that steamboat?

A. You say "all the time." Please specify.

Q. From the time the two whistles were given from the Vanderbilt was not your eye kept directly upon the steamboat Vanderbilt?

A. From the time the two whistles were given until we came into collision would not exceed five or six seconds. During that time I saw a collision was likely to occur, and my mind and my eye was directed toward that vessel.

Q. Explain to me, if that is so, how on a reasonably dark night and you outside the pilot-house and your mind was not diverted that you could see Captain Craig pull the cord for the whistle and pull the bell-cord.

A. For this reason: Suppose this (indicating) is the deck of the Yosemite. Here (indicating) is the pilot-house. I was standing here; here was this boat. I looked right through. Now, I may stand here and look out of that window and it is impossible for you to make a motion without my knowing it.

Q. I understand you to locate yourself on the starboard side of the pilot-house, and it had an oval front, and you were so far around front that you could see right around, and there was nothing to obstruct your view. Is that the position you placed yourself?

A. I thought I made it clear, but I will repeat. I stated that the front was oval so that you might understand that there was no corner or projection in my way anywhere. Now, if I am
230 standing here and here is an oval front I can see what is taking place, and I can look through that directly ahead, and there is nothing but a light frame-work of the sash to keep the view at all.

Q. In other words, to see the Vanderbilt you didn't see her from where you stood from the time the two whistles were given from the Vanderbilt except as you saw her by looking through the pilot-house?

A. No, sir.

Q. Did you see her in any other way except through the pilot-house?

A. Yes; I saw her in front of it; I saw her all the time in front.

Q. When you saw her in front and looking at her you were not then looking through the pilot-house to see it?

A. As I told you before, the direction was so very nearly the same.

Q. Did you see the Vanderbilt from the time the two whistles were given by seeing her without looking through the pilot-house or did you see her both ways?

A. I submit that is not a proper question for me to give yes or no to. I can explain how I was standing.

Q. You must understand it from that, it seems to me?

A. As I say, if there is a man at my left and I am looking so (indicating) it is impossible for this man to do anything that I don't see. My eye is here, but I can see here. I saw Capt. Craig pull the bells, although my eye was on the boat. Capt. Craig was not over six feet from me.

Q. When you speak of a vessel abeam, what do you mean by that phrase?

A. Taking a line drawn square across your own vessel through the pilot-house, an imaginary line run across, anything would be abeam when it was exactly in a line with that. We say a point is abeam when it bears exactly at right angles with the pilot-house.

Q. How many points are there on a compass?

A. 32. The four cardinal points are called north, south, east, and west.

Q. There are eight points between each of the four points, making it 32 deg.?

231 A. You have to count one of these to make eight. There are eight in every quarter.

Q. You saw your boat as it passed through the Vanderbilt and the bow end of the Vanderbilt went off on one side and the main part remained on the other side; you cut off a chunk of the Vanderbilt?

A. Yes, sir; I saw the bow of the starboard side, and the main part of the Vanderbilt was on our port.

Q. About the time you were going through her wasn't the Vanderbilt in the act of backing, so that she was really about that time backing?

A. She began to back at the moment we struck her or perhaps half a second afterwards. Her bells were struck when we were in just such proximity that I couldn't say whether our stem had struck her before her wheels commenced to revolve or not. My vessel was an iron and steel yacht.

Q. Was her bow of steel?

A. Her stem was of steel; her stem and keel was one piece.

Q. How far did the steel extend back from the front of the stem?

A. The plating was of iron and the stem and frames and bracings were of steel.

Q. How much did that extend back from the stem—the steel braces, &c.?

A. Eight or ten feet, the forward compartment. This bow part of the boat was built very strong.

Redirect examination by Mr. BENEDICT:

Q. You were asked what abeam meant, and you said a line drawn abreast of the pilot-house carried out would be about abeam. When you said the Charlotte Vanderbilt was nearly abeam of you how far above that line did you mean she was?

A. I think she was probably between 100 and 200 feet from what the line would have been if extended sufficiently.

Q. You spoke of the Yosemite being higher at the stern and at the bow than in the centre. That is what is called the "sheer" of the vessel's deck?

232 A. Yes, sir. She had a very heavy sheer. At the stern she was raised so much that an ordinary man standing on the deck would have looked over the social hall and have seen an object that was a few hundred feet away even if it did not rise but very little above the surface of the water. I should judge a man's eyes standing on the stern or near the stern of the Yosemite would have been, if he was of ordinary height, between three or four feet higher above the water than the roof of the social hall.

Q. Counsel asked you in regard to being able to see Craig's movements in the pilot-house. Could you hear the pulling of the bell and the sounding of the whistle?

A. Yes, sir; I could. It wasn't so dark that my eyes would not have been caught by the movement. In the first place, I could hear him pull, because it is a very strong apparatus he takes hold of, and then there is a return tube from the gong in the engine-room to the pilot-house that will carry the sound from that bell directly back, so that we can tell in the pilot-house or anywheres near it if the bell has been struck in the engine-room.

Q. What about the pulling of the whistle?

A. That acts very quickly, because the whistle is directly in the rear of the pilot-house, and the action of the cord is so short that you hear it at once almost.

Q. Were the lights which you carried upon this occasion the same kind of lights as you had theretofore carried on all the rivers on which you had before sailed with the Yosemite?

A. Yes, sir; they were, and we had never had any other kind of lights up.

Recross-examination by Mr. CANTINE:

Q. At the foot of the rudder post was there not a platform about 16 inches above the rest of the vessel for some nine or ten feet in front of the stern?

A. There was—from the rudder post to the stern.

Q. It was from the rudder post extending to the stern, and not from the rudder post?

233 A. No, sir; I don't think it came in front of the rudder post. That was so no one would have their legs broken by the steering gear, which worked clear over this spar deck. It was placed so for the reason that if any of the tiller ropes was broken you could attach cables and work it without going below.

"I heard one whistle blown by some other steamer and answered by us, and then I was surprised about a minute after to hear two whistles by us and answered immediately by them."

DAVID D. SMITH sworn by the defendant.

Examined by Mr. BENEDICT:

I reside at Nyack; I am doing no business but my own private business at present; have been steamboating; I have had an experience of forty years in steamboats, as owner of them and manager.

Q. How many have you owned?

A. I can hardly tell you without counting up, but a good many. I know the Charlotte Vanderbilt; have known her for a number of years; I can't say how long exactly. I have seen her a great many years plying in and out of New York.

Q. Do you know when she was built?

A. I noticed on one of the papers just now 1857, I think; so the copy of the enrollment states. I think she was built in New Jersey.

Q. Does that agree with your memory as to the time she was built?

A. I couldn't recall that from my own recollection.

Q. Is it your recollection that she was built longer ago than that?

A. It did seem to me she was older than that, but perhaps she was not, however.

Q. Have you known anything of her history in these later years?

A. I don't know what repairs they have done to her. I have only seen her going and coming in and out of the city of New York and laying pretty nearly where our line of boats come in.

234 Q. From what you know of her, what would you say was her value in July, 1882?

(Objected to until the witness' competency is shown.)

Cross-examination by Mr. CANTINE:

I have never been aboard this boat to examine her.

Q. Have you ever seen anything of her except to see her running on the river or lying along the dock near where you were?

A. That is about all.

Q. You know nothing about the condition of her timbers, of her engine or boilers, or the general features of the boat other than merely seeing the outside of the boat?

A. Not from my own investigation.

Q. From your investigation have you any knowledge sufficient to form a reasonable opinion as to the value?

A. That we get at somewhat by the character and reputation of the boat as we would of a man very often, and my impression is

from my own observation that I would be paying all she was worth——

Q. (Interrupting.) Is the means of the information that you have got of the condition of the Vanderbilt, &c., from what you have heard others say?

A. No; of my own view of the matter.

Q. All you know of her is from the view you have had of her from being along the dock and seeing her occasionally and seeing her pass up and down?

A. Yes, sir; I have never been on her to make any investigation. I have been on her some few years ago. It was a casual being upon her.

Q. How long were you upon her?

A. Probably just to walk around and look at the boat.

Q. Did you go aboard of her to look at her?

A. Nothing special.

Q. How many years ago do you put it?

A. Probably five or six years ago.

235 Redirect examination by Mr. BENEDICT:

Q. From what you know of her what would you say was her value in July, 1882? I will take your estimate upon that.

A. I should think, sir, that it would be a fair valuation for her from $16,000 to $18,000.

Q. You know of her tonnage, I suppose?

A. No, sir; not exactly.

Q. Her enrollment states that she measures 485.71 tons. Does that change your estimate of her value?

A. No, sir.

Q. We should assume that her copper had been taken off from her. Does that change the value in your estimate?

A. Certainly; she would be rather less valuable, if anything. I will let the valuation stand, however.

JAMES HINCKLEY, cross-examined, testified:

Q. Did you ever see how quick the Yosemite could be stopped?

A. I have been on her 18 months. In that time I have seen her and taken notice how quick she could be stopped.

Q. Running at the rate of 12 miles an hour, say, how quick do you say she could be stopped?

A. Dead still in the water?

Q. Yes; and flood tide with her as you had it that night?

A. About twice her length. That would be about twice 198 feet—you can say 400 feet. I have often steered her; she steers easy.

JAMES MOONE, cross-examined, testified:

Q. Were you able to determine what sort of a vessel that was on when you discovered these lights?

A. I could not. She had no bow light on.

Q. Previous to that time in the navigation of the Hudson river

between New York and Saugerties had you ever seen a vessel in the night-time with such a light on and without any bow light?

(Objected to for the same reason as before. Objection overruled. Defendant excepts.)

236 A. I had once or twice.

Q. During the whole time you had run?

A. Yes, sir.

Q. How far down the river was it where you had seen it upon the one or two occasions?

A. Once at West Point. I can't remember exactly where the other time.

Q. Do you remember what vessel it was on at West Point?

A. I don't know the name of the vessel. I know the nature of the vessel. It was two years ago when I saw it on that vessel; it was before I had seen this yacht. As I went down the river I did not get any signal from this yacht.

Q. When you got nearly alongside of the vessel could you or did you see any row of dead lights?

A. I saw round lights. I wouldn't swear to round dead lights or what they were.

Q. They were below the main deck of the vessel, weren't they?

A. Well, I wouldn't swear to round dead lights or what they were.

Q. They were below the main deck of the vessel, weren't they?

A. Well, I wouldn't swear whether they were below the main deck or below her house that she had on.

Q. Did they appear like small, round glasses which are in sea-going ships?

A. I don't think they did; I wouldn't swear to that positive, though.

Q. How near did you get to this vessel when you passed her or met her?

A. It might have been 300 or 400 feet.

Q. How near did you get to this vessel before you could see her outline?

A. I couldn't tell the exact distance.

Q. Could you get anything like seeing the outline of the vessel until you got substantially abreast of her?

A. Not till we got about abreast of her.

Q. Can you tell how far Clearwater's quarry is below Krum Elbow?

A. I should think, as near as I can calculate, about a mile
237 and a quarter or a mile and a half. When I met this vessel it was in the neighborhood of nine o'clock.

Q. Is there any particular reason why you recollect the time?

A. I didn't look at my watch particularly, but the lookout looked at his watch and it was about 9 o'clock. I asked him for the time and he announced to me that it was 9 o'clock. The last time I went down the Hudson river was night before last.

Q. What is the usual and customary route that a steamboat takes

in running down from opposite Rhinebeck to the Esopus light? Give us, if you can, first the point as they bear upon the land or other fixed objects, and then give the points of the compass, if you can do so.

A. There is some considerable difference in compasses. The compass I run by I run from Barrytown between the two ice-houses at Esopus a south by west course—that is, one point west of south.

Q. You commenced to run that course almost from Barrytown, as I understand?

A. I generally steer that course from Barrytown.

Q. When you get down to the end of that course how near are you to opposite this upper ice-house when you shift your course?

A. About the middle of the river; we are about opposite the upper ice-house.

Q. How much do you shift your course? What do you head her on next?

A. South by east course.

Q. What object on the land does that strike?

A. Dinsmore's house.

Q. That is, one point east of south?

A. Two points—south-southeast—that is, two points east of south. I keep that course till I get opposite Esopus light or a little below; then I shift my course to south by west.

Q. In running up the river do you run those courses reversed?

A. They will vary a little.

238 Q. What variation would there be in running up the river from the reverse?

A. Half a point and from that to three-quarters.

Q. Take, for instance, the course you take in coming up the river when you turn Esopus light and come north, on what object on the land or what point on the land would you be about headed for?

A. If I was going to steer the courses I would steer straight for Kingston light.

Q. How far would you keep on that course steering for Kingston light before you would change?

A. About opposite Rhinebeck bluff; then take a northeast course.

Cross-examined by Mr. BENEDICT:

Q. I want to know in what respect you say this light is not a customary light. As I understand you now, it is not in the light itself, but in the fact that there was not another light by it?

A. It is not a customary light on the North river. I mean it is not the customary light for the North river.

Q. You don't answer the question. Is what makes it uncustomary the fact that there was not another light with it?

A. Because it didn't show two lights; that's what makes it uncustomary to me.

Q. You said you knew the nature of the vessel. You understood it to be a steam vessel?

A. I didn't say anything of the kind. I didn't say I knew the nature of it.

Q. I understood you to say you couldn't determine the vessel from the light, but you understood the nature of it; I don't mean you understood it was a yacht, but you understood it was a vessel that was going to the eastward of you?

A. That I understood; that was all. I didn't understand that it was a steam vessel till I got to her.

Q. When you saw those two lights didn't you understand that was a steam vessel?

A. Well, I have seen steam vessels carry the same light, only they had a head-light.

(Question repeated.)

239 A. I calculated it was a steam vessel of some kind.

Q. You have seen a great many sea-going vessels?

A. Few. I have seen a good many vessels that carry sail.

Q. Did you ever see one that was rigged so as to have a low light at the bow and the high light at the stern?

A. I didn't see none there.

Q. Did you ever see any anywhere?

A. I never saw any coming from sea. I have seen sea-going vessels on the North river having regular North River lights. I have never seen steamers carrying sail that had a low head light and a low stern light.

Redirect examination by Mr. CANTINE:

Q. You answered you had seen ocean-going steamers at the mouth of the Rondout creek; were those lying there at anchor?

A. Yes, sir.

Q. I understood you to say that you had seen ocean-going vessels on the Hudson river with regular Hudson River lights on?

A. Yes, sir.

Q. How long ago have you seen those?

A. I couldn't say positively.

Q. Have you seen them on several occasions?

A. Not very often. I have seen them onto vessels that come to Kingston point to anchor, and up Livingston creek; before they got there; regular North River lights. Those are ocean-going steam vessels.

Recross-examination by Mr. BENEDICT:

Q. What kind of vessels did you mean by ocean-going vessels?

A. I mean steam vessels.

To Mr. Westbrook: I won't say what vessels they were.

Q. How did you know they were "ocean-going vessels?" Give the names of them.

A. I am not certain, but think I have seen the Lone Star somewhere in the neighborhood of Livingston creek. That is a steamer. I don't know where she runs. I know she runs or has run

240 to sea. She was not running to sea then because she was on the North river.

Q. Do you know where she was usually running at that time? Don't you know that is a coast vessel?

A. Yes, sir.

Q. She is a coast vessel and not an ocean-going vessel?

A. I know what she is.

Q. Was she a sail vessel?

A. Sail and steam vessel.

Q. Where was her forward light placed?

A. On her stem, I suppose you might call it.

Q. Do you know how it was placed and fixed?

A. I was not aboard of her at all exactly. I know it was fixed on her bow.

Q. What part of her bow?

A. As far as they could get it, I suppose.

Q. Where was she when you saw her?

A. I can't tell.

Q. When was it?

A. That's a good while ago. I can't remember exactly. It may be 9 or 10 years ago. She was under steam. I met them. I was on the steamer "Ansonia" at that time. I found out it was the "Lone Star" by seeing her. When I met her I didn't find out her name at the time. I saw the vessel laying at anchor and I supposed it was the same vessel.

Q. And then you supposed that was the one you had seen under sail?

A. Yes, sir; I was certain it was her.

Q. How were you certain?

A. I can generally tell when I see a thing the second time.

Q. You could tell a vessel of the same pattern from another when you didn't know the name by meeting her at night, do you mean to say that? Suppose you met her at night and didn't see the name and didn't know what vessel it was, and you saw a vessel lying at anchor a week afterwards, could you tell it was the "Lone Star"?

A. I said the "Lone Star." I will not be certain whether it was the "Lone Star" or "Evening Star."

241 Question repeated. I wouldn't like to swear positively to it.

Q. Have you seen other sea-going vessels with these river lights?

A. No, sir; I have not; that's the only one I ever saw. I have stated what I know about that. I think that was 10 years ago.

By Mr. CANTINE:

Q. When you saw the vessel you speak of did she appear to you, as you saw her at night, to be an ocean-going rigged ship with masts, under steam?

A. Well, the only way I could tell was there was a little difference in the light.

Q. Did she appear to have masts on and appear to be an ocean-constructed vessel?

A. Not at the time I first sighted her. When I came to her she did, though.

SAMUEL SAMUELS, sworn and examined on behalf of defendant, testified:

I am a nautical man; I reside in the city of New York, at St. Mary's park. I have been connected with the sea from 1836 until the present time; some few times, of course, I remain on shore; otherwise I still consider myself a sailor. I have recently returned from a trip across the Atlantic as commander of the yacht Dauntless. I have not had much or any experience on the Hudson river. In the course of my education as a sailor I have occupied pretty much all conditions that a sailor can on board, both in sailing vessels and steamers. At the age of 11 I started and worked my way from a poor boy through what we call the hawse pipes forward, aft to the cabin. I held every position from cabin boy and officer up to the command of a sailing ship. When the war broke out I was hurt on board my ship, broke my leg at sea homeward bound from Liverpool. I then joined the army; I was placed in command of the steam transport John Rice, on the coast; we were in the army service. I remained on the John Rice until I sufficiently recovered my strength to take charge of the quartermaster's
242 department in New York. Upon my convalescence I was placed in charge of the quartermaster's department in New York as general superintendent of the outfits and repairs; my duties were to see the dispatches were properly equipped and properly manned; receiving and dispatching that was my duty as the general superintendent. I suppose we would average three to four, sometimes five, a day; we would dispatch both sail and steam; I occupied that position some months, when, at the failure of General Butler to take Fort Fisher, I was ordered from the department to take charge of the steamship McClellan, which was an army transport, and reported on the James to Gen. Terry. I commanded the steamship McClellan. I was there during the battle of Fort Fisher. I remained in command of her until the close of the war. At the close of the war I then commanded the steamship Fulton, the last of our American steamers to cross the Atlantic; that is my experience in steamships as commander. I subsequently was the president of a wrecking company, which owned five steamers and several sailing vessels. Two of them were side-wheel boats and three of them were propellers. My duties in regard to those vessels were to dispatch them to the points where vessels might be ashore or in distress, and to see if they were inadequately equipped. I afterward had charge of the Pacific Mail Steamship Company as general superintendent at San Francisco. We had three lines, one line to China and Japan, the other to Australia, and the other to Panama along the coast. It was my duty as general superintendent of outfits and repairs to see that they were properly equipped and manned and despatched. I have been across the ocean several times as commander of yachts; first in 1866, in command of the Henrietta, during the ocean race between the Henrietta, the Fleet Wing, and the Vesta; that was in 1866. Then again on the
243 Dauntless, I think, in 1871. My experience as a navigator

brings me to a pretty full communication with the rules of all kinds of navigation.

Q. I will ask you, now, what is understood by nautical men as a coasting vessel.

Objected to by plaintiff on grounds, first, that the law defines a coaster; second, that the lexicographers and dictionaries give the definition of the word; third, that the defendant did not apprise the plaintiffs by anything in their answer that they claimed by any rule or custom or by the definition of any particular words or claim under any particular word that this vessel had any rights to navigate other than is set forth in her marine papers and under the license and enrollment and certificate of inspection which have been put in evidence.

Objection sustained. Defendant excepted.

Q. Is or is not a coasting vessel one that is engaged in the coasting trade?

Same objection, ruling, and exception.

Q. Is not a coasting vessel one that carries freight or passengers for pay between ports of the United States?

Same objection, ruling, and exception.

Steam coasting vessels, in fact, often carry sails.

Q. What is understood by nautical men—mariners engaged in navigation—by a yacht?

The plaintiffs objected to the question on the ground that the statute has clearly defined what they are—they are models of naval architecture—and also as immaterial and irrelevant, and also that the statute has fully defined what a yacht is exclusively as a measured vessel and designed as a model of naval architecture, which must embrace this yacht, as she is licensed and enrolled as such and navigated as such.

244 Objection sustained. The defendant excepted.

Q. What is commonly understood by naval men as a yacht?

Same objection, ruling, and exception.

Q. Does the yacht carry passengers or merchandise for pay?

Same objection, ruling, and exception.

Q. Is a yacht engaged in the coasting trade?

Same objection, ruling, and exception.

Q. Can a yacht go where she pleases to any part of the world without being interfered with by the custom-houses?

Same objection, ruling, and exception.

Q. In point of fact, in actual marine practice and use, whether a yacht is a coasting vessel as understood by mariners and nautical men? State the fact in that regard.

Same objection, ruling, and exception.

Q. Have you known many yachts to cross the ocean?

Same objection, ruling, and exception.

Q. In this connection I will now read or offer to read the definition of a "coaster," of a "yacht," taken from Webster's Unabridged Dictionary:

Coaster.—A vessel that is employed in sailing along a coast, or is licensed to navigate or trade from port to port in the same country.

Yacht.—A light and elegantly furnished vessel, used either for private parties of pleasure or as a vessel of state to convey princes, &c., from one place to another; a sea-going vessel used only for pleasure trips, racing, and the like.

Same objection, ruling, and exception.

—. Where two vessels are approaching and the lights of one are not understood nor their meaning understood by the pilot of the other, the practice of navigation and good seamanship require the one that has not understood the signal given to stop.

245 If a steamer carries sail and has her sails furled around and lashed to the mast, there are certain points where a vessel approaching her would not be able to see the aft light of what is called the centre-range lights of the other vessel. In deep-water sailing we do not use the after light at all; we simply use it upon cases of emergency when we see a vessel approaching from the stern, to prevent us from being run into or over from her stern; that is because no other lights can be seen by the vessel approaching from the stern, unless it may be some of the "bull's-eye" lights. I understand the after light is one that shines all around the horizon.

Q. Is such after light, in your judgment, of any use to vessels approaching each other from opposite directions in determining the course of the vessel bearing the central range of lights?

A. We do not consider them of any use. Seamen determine the course of a vessel which is approaching them by the head-light and side lights. If we can see the three together, we know she is coming head on, and by one light, green or red, we know on which side she is likely to pass ours.

Q. May it often happen that in foggy weather you may see where a vessel is approaching that has a central range of lights, the front and the fore and the after lights—you may see the lights on the foremast and not be able to see the light on the aft?

A. A vessel coming out of the fog, we see her head-lights first; if she has anything else we see it afterwards. It does not necessarily follow we should see her head-light. The view of the after one may be intercepted by the haze or fog, while you may see the light on the foremast. Colored lights on side-wheel boats are placed by the wheel-house, the green light on the starboard and the red on the port side. They are placed just in front of the wheel-house. Some have them on top of the wheel-house. I have no river practice.

The law is explicit that they shall be placed so that the star-
246 board lights shall not show on the port of the boat; therefore

a screen is placed behind the lights. The idea is to get them as far apart as possible, so as to show the movement of the vessels.

Q. If the sails of the steamer are spread, then would it be possible for a boat approaching to see the after lights?

A. The vessel approaching could see the after light if the weather was clear, if she was coming beam on, because she would see the head-light and the after light at the same timo; otherwise not; therefore we never use it, because it is never safe to do. If we see a white light and colored light on the vessel approaching, we know which way she is going; we do not know what she is, unless we have the third light—the head-light; the head-light would indicate her to be a steamer; without any head-light she is a sailing vessel.

Q. If you see a vessel approaching you and see a red light and not her green, and you know that she sees your red light, she is in such a position she can only see your red and not your green light, what is the condition?

A. Both vessels are in place of safety.

Q. They cannot collide as long as that thing takes place?

A. No, sir.

Q. Tell us why that is so.

A. Because we keep her on the left. We turn to the right; the rule all over the world that where in doubt as to the color of the light we stop. We see the green light; we know she is to our right; then we keep to the left. We never attempt to cross the bow under any circumstances once having given the signal.

Q. Is it not good seamanship to do so?

A. No; if a pilot sees an approaching yacht with the mast-head light and side colored lights, either one or both, he could not mistake her for a tow if he were a competent pilot. In my opinion the two vertical lights which the law requires to be displayed by a tug could not appear to be blended as one light, even at a distance of two or three miles. A sea-going steamer cannot carry her
247 lights on her stem, because she frequently pitches her bows under. If a pilot was not able to determine the direction an approaching vessel was going by the sight of a foremast white, bright light and her red port light, I would not think him a competent pilot. If a pilot sees a red light and a high mast light on the vessel that is approaching and does not understand what those lights mean, he is incompetent. If not understanding them he should still go on and not slow, I would not think him a competent pilot.

Q. One of the witnesses, Mr. Haines, has testified that while sitting near the extreme end of the deck of the Yosemite aft of the social hall and nearly over the rudder he saw on the left hand or port side of the Yosemite, past this house on deck or the social hall, an approaching steamer, the Vanderbilt, which exposed only her red light to his view. Whether from that testimony, if it were true, you can say in what relative positions those two boats must necessarily have been.

A. The Vanderbilt must have been perhaps two points on the port bow of the Yosemite; otherwise she could not see her red light.

(COURT:)

Q. If each had continued on its course the vessels would have passed in safety?

A. Undoubtedly.

Q. But if the lights on the Yosemite were properly placed and the witness from the position I have described could see the Vanderbilt over the port side of the Yosemite, what light must the Yosemite necessarily have displayed to those on board the Vanderbilt?

A. Her red light; the screen would have hidden the green light; the Yosemite must have been pointed so far to the right of the Vanderbilt as to conceal her green light.

Q. If at the moment of the collision between the two boats the Yosemite struck the Vanderbilt 55 feet abaft her stem and struck her at right angles, and if the Yosemite had not changed her course after the interchange of single whistles, from what position
248 must the Vanderbilt have come to have got herself across the bow of — Yosemite?

A. The Vanderbilt must have starboarded her helm and shown her green light and left the place of safety and put herself directly in a place of danger.

Q. After each boat like the Vanderbilt and the Yosemite, you have heard described in some of the testimony here to-day, had blown single whistles, the Yosemite one first, and then the Vanderbilt one accepting it, would it be good seamanship for the steamer coming down (the Vanderbilt), which had accepted the whistle, to blow two whistles and change her course by a rank sheer to the eastward?

A. No, sir; the effect of such a sheer would be to place his boat in a position of danger and across the bow of the yacht going up; a pilot who should do that would not, in my judgment, be a competent pilot.

Q. In any event, after a single whistle by the yacht and a single whistle of acceptance by the Vanderbilt, would you think there was any justification in good seamanship in the Vanderbilt's blowing two whistles and changing her course unless it was clear and certain demonstration that there was ample room and verge enough for both vessels to understand the new arrangement, and to change their courses, if the yacht chose to accept the two whistles, so as to go on to its own length?

A. If the vessel giving the first signal had been asked by the second vessel to allow her to cross the bow, and she should accept, it would be because he would suppose they are far enough distance apart to avoid danger, and then it is at the risk of the second vessel of putting the first vessel in that position. None of them would change the course until the whistles are distinctly understood to give them time to change their courses. That is done in the lower bay very frequently.

Q. A great many vessels around there?

A. Yes, sir.

Q. The plaintiff's witness, Peter E. Bell, testified that if
249 one colored light can be seen that is a sure indication of safety, and that the object of the colored lights is to show on which side the party seeing it should go; do you agree with him?

A. Certainly.

Q. Can you tell us, under the circumstances you have had described to you, where the Vanderbilt was traveling, say, at nine miles an hour and the Yosemite about 15 or 16, making a combined speed of 25 or 26 miles an hour, and the Vanderbilt comes within 100 feet or thereabouts of the Yosemite and then gives a rank sheer to the east so as to cross the bows of the Yosemite, how long a time under those circumstances the green light of the Vanderbilt would be exposed to view from the deck of the Yosemite?

A. I have not worked out the rate of speed, but I should judge about a mile in two minutes.

Q. How long under those circumstances would the green light of the Vanderbilt be exposed to view?

A. A light can be exposed almost instantly as soon as the vessel changed the course of the bow, as soon as she moves the helm.

Q. She is 100 feet off and the two came together 25 or 26 miles an hour; she comes right around from seeing the red light and exposing her green light, how long, under those circumstances of speed, would the green light be probably visible from the Yosemite?

A. I should judge the speed they were going a very few seconds. The number of feet they run in a second I don't know.

Q. This is about 37 feet a second. I think I asked you this question. I will put it a little more in detail. If these two vessels were, say, about 100 feet apart, or, if you please, make it 200 feet, and approached each other with a combined speed of something like 25 or 26 miles an hour, say about 35 or 37 feet a second, and the red light of each was visible from the other before that, what would you think of the propriety of putting the wheel on the steamboat hard-a-star-
250 board so as to change her course directly to the east shore?

A. Bad seamanship.

Q. Is there any other way, considering the position the vessels were as you understand them, in which such an accident could be caused except by sheering the Vanderbilt across the bow of the Yosemite?

To this question the plaintiff objected as assuming all the disputed questions of fact in favor of the one side. He must determine that first, and that there was conflicting evidence which was on the port side and the starboard side.

The objection was sustained, and defendant excepted.

Q. It is testified on this night Post the lookout of the Vanderbilt, came into the wheel-house, Whittaker says, just below Port Ewen, and Post himself says just about Port Ewen—at all events, some three miles above Esopus light—before the yacht's lights came into view, and stayed in the wheel-house until the collision, having hold of the wheel with the pilot about the time of the two whistles

and at the time of the collision. How should you characterize such action of the lookout as regards good seamanship?

A. I am not accustomed to the rules of the river, but from the practice that I know no lookout would dare to leave his post. The proper position for the lookout to be is where he can see to his best advantage, but not in the wheel-house or near the wheel-house. If there are any lights in the house, either in front or by his side, they would tend to daze or confuse his view of approaching lights. A lookout should not perform any other duties while he is on the watch.

Cross-examination by Mr. CANTINE:

Q. Plaintiff's counsel reads rules No. 24, being a part of section 4233 of the Revised Statutes: "In construing and obeying these rules due regard must be had to all dangers of navigation 251 and to any special circumstance which may exist in any particular case rendering departure from them necessary in order to avoid immediate danger." Do you understand there is such a rule in navigation?

A. Yes.

Q. If such a state of facts does exist, would you say that a pilot was incompetent because he exercises his judgment upon that state of facts?

A. There is very little judgment to be exercised. The law is explicit; stop it, back it, if you are in doubt.

Q. That would never leave any room for exercising any other judgment under extraordinary circumstances?

A. Under extraordinary circumstances I believe all rules are waived; under all circumstances, anyway, that is where danger is.

Q. You would call it good seamanship if a man was in great danger and there were reasonable grounds to believe that the danger could be averted if he did not obey the rule of going to the right, if it was a certain thing by going to the right he would have the collision?

A. If it is a certain thing to him?

Q. Yes, sir.

A. He must consider that he would take the chances by breaking the rule and waiving the signal that he had already received; he is responsible for the act.

Q. But suppose under those special dangers that there are to it that he does give the signal of changing and the other person seeing the danger also accepts the signal as given?

A. If both accept the signal I think they would exercise their judgment to see if they could avoid the collision.

Q. You would not call it bad seamanship in that case?

A. If he was in doubt it is bad seamanship.

Q. Suppose he is not—suppose it is a dead open and shut—if he keeps on his course he is sure to be run down, by a change, a reasonable prospect, he may escape?

A. I suppose the man may exonerate himself in that case. If it

was absolutely certain a pilot was to be run down or run
252 somebody else down, if he adhered to the rule naturally he would take the chances and depart from the rules.

Q. That would be left for him?

A. That is all I would expect him to do. The central-range lights consist of a light aft hoisted on the flag-staff and a light forward on the stem on river boats; the one on the flag-staff is the highest; it is supposed to show all around.

Q. In the night-time a steamboat going down the river and another one following and they see simply one light—one high white light—would not that be evidence to a pilot that a steam vessel was ahead of him and going in the same direction he was going?

A. No; because he would not know what it was.

Q. Then if he saw an ocean light—what was described in the rules as an ocean light—and could not see any other light, would he know what it was?

A. No.

Q. Before he could determine what sort of a vessel it was, whether it was a stationary boat or whether it was moving, it would be necessary for him to stop to see one or the other of the colored lights?

A. He would see one or the other of the colored lights as they approached each other.

Q. Suppose they had gone out?

A. He would not know what it is; consequently, seeing the light out of place, he would stop; he does not know what the object is; there is a light there.

Q. If he was not headed on it would he stop?

A. I don't know what he would; I would stop.

Q. Would you stop if you were traveling on a certain course if you saw off to one side of you a certain light?

A. I saw a light in the channel; supposed the boat sinking.

Q. If you were headed far enough to one side?

A. I would keep about my business.

Q. Would you consider that taking the chances? Would it be proper to change your course so you did not head on?

A. No, sir; I would probably change my course.

253 Q. If you stopped and it was a stationary vessel how would you find out what that light was?

A. I would stop until I ascertained.

Q. Could you ascertain before daylight under such circumstances?

A. I might not.

Q. If you struck a wreck?

A. All according to how large she is or whether she was lying across the river.

Q. Do you think that on the Hudson river there are wrecks of a steamboat extending across the river?

A. Some of your boats are over 300 feet long; sink one of them in the centre of the river she would fill it up.

Q. If the channel was 2,000 feet wide don't you think any pilot,

if he saw the light which he was not head on, that he could, in a channel 2,000 feet wide on the Hudson river, head so that he would pass such a light with safety even if it was a light?

A. He might; he would observe the rules of the road; he would keep close to the bank and proceed slowly.

Q. If he was on the other side of the river would he cross over?

A. No, sir.

Q. Where is the rule of the road that you can refer us to if he saw only this one light, it appeared to be a lone light, with no others, that he would be bound to go on the starboard side of?

A. I expect your proposition was if he will proceed he will keep on the right bank and proceed slowly; he knows the danger; it is his duty to stop until he ascertains the danger.

Q. If he sees no other light at all is there any rule that he should go on one side more than the other?

A. No.

Q. If you can make any better explanation than you have, if it was a stationary light that you would stop, there would be any way of finding out by stopping?

A. I don't know whether it is a stationary light or not; we would ascertain by stopping.

254 Q. Is there any way to explain if it was a stationary light how you would ascertain?

A. If I was coming down the river and I saw a light I did not understand I would stop. If the tide was flood I would approach the light very carefully. I could then judge whether it was a stationary or moving light by approaching it carefully. If it is on the ebb tide I would be forced to go towards it. I could understand it as well, but I would be very apt to stop it still and swing the boat around.

Q. Would you do that if you were not headed on that light?

A. Why, certainly I would if the channel is narrow enough.

Q. If the channel was 2,000 feet wide?

A. I think I would risk the vessel, as it would not be 2,000 feet long; possibly I would go to the westward bound down the channel.

Q. If you were on the east side of the channel would you turn and go to the west?

A. No; I would keep on the east side.

Q. Have you ever navigated the Hudson river to any extent?

A. No, sir.

Q. Do you know where the lookouts are placed on North River steamboats?

A. I don't know what custom they have.

Q. Nor what rules?

A. I don't know anything about the rules except I have heard them read here.

Q. Your experience as a navigator has been upon the ocean?

A. Yes, sir; and the coast, if you please.

Q. Sailing on the ocean?

A. That applies; it appears to be partially understood here that the coast is not the ocean.

Q. You spoke about your experience with tug-boats. Where was that?

A. During the war I have towed vessels from Fortress Monroe to N. Y.; also up the James and Potomac.

Q. Vessels navigating the Potomac and James rivers at that time during the war were all Government transports?

A. They were not all Government transports.

255 Q. They were most all?

A. Those were I was connected with. Yes, we had our regular packets of service and freight boats.

Q. On the Hudson river, north of N. Y., do you think there would be any danger if there was a light upon the bow of a steamer that was under sail of having a bow light?

A. There is no danger where you place the light in the river where it is smooth water.

Q. Now, you said Mr. Haines could see along the side of this vessel and see the red light if they were two points off. Suppose Mr. Haines is placed behind a saloon over the top of which he can't look, he has only some 5 or 6 feet back of it, and he sits about the centre of it, and this cabin is 12 feet wide, and that vessel was (a model of it shown witness) a mile off, would not she have to be more than two points before he could see it?

A. No, sir.

Q. Would not that angle cut him more than two points?

A. Any proof that he sat there?

Q. If he sat 6 feet back, the house 12 feet wide—suppose he sat a few feet back—6 or 8 or 10 feet—and the house 12 feet wide, he has got to look across that corner. Do you mean to say that if that vessel was a mile off, if she was more than two points on either side of being head and head——

A. That is 8 points (indicating), that is 4 points (indicating), and this would be about 2 points (indicating).

Q. Would not 2 points the further you went off carry you off more than 2 points?

A. No; the points are points, no matter how far off they are; the angle is the same.

Q. I will illustrate it in this way: There we carry it at that angle (indicating); the further you get off would not it be the further the vessel would have to be to the west?

A. Yes, sir; still the angle would be the same.

Q. He could not see that vessel?

A. He could see it plainer the further you put it out.

256 Q. Suppose she was only 2 points a mile off, do you mean to say on that 10 feet such an angle the steamboat would not have to be 2 points more than head on? Place that vessel 2 points.

A. (Witness placing models.) I could not swear. If you can make a diagram to show the distance by feet we could get at it exactly.

Q. About this boat—she is 2 points?

A. (Ind.) There she is 2 points. She is not heading exactly as you say. Here is the way she was heading, because they were coming down head and head.

Q. I will put it again in another way. I will suppose he is 10 feet west of an object or away from an object that is 12 feet wide. He is at the centre of that object that he is got to look so that he has got to get 6 feet off—that is to say, he looks 6 feet on either side, when he is 12 feet back?

A. No, sir; that is a question of algebra. Was he a mile off?

Q. Yes, sir.

A. That is a question of algebra. If there is any one here better in algebra than I am he may come forward; I can't work it out.

Q. If he was 12 feet from there, 12 feet further would be the circumference of the circle, 24 feet; 12 feet would be the circle. If he had to look on that circle—take the middle of the circle—the diameter he had to get, 6 feet—if he had to get 6 feet from the diameter, can you tell how many points that would be?

A. Make a circle.

Q. (Counsel makes a circle.) Now, the vessels were put in position by the counsel upon the other side in that way. Now, can two vessels be approaching each other diagonally and so they would come that they were at substantially right angles and one not directly across the stream and the other up the stream?

A. Oh, yes.

Q. You were asked this question: If there were a light in the pilot-house, if that would not tend to obscure the view of the persons in the pilot-house. When the compass is not being used is it good seamanship to have a light in the pilot-house?

257 A. In sea-going vessels always to have it where we can get it.

Q. If there were no light in the pilot-house and the window was open and the man standing right at the front of the pilot-house, do you think that he could not see as well from there as if he stood right outside of the pilot-house in front?

A. If he had his face outside the window or his face behind it I dare say he could.

Q. If there was no light in there?

A. Yes, sir.

(JUROR:)

Q. If the river was perfectly straight where the steamers met?

A. I can't answer that.

Redirect examination:

Q. You were describing in answer to the questions of plaintiff what a pilot ought to do on seeing a single light and nothing more. Would you have any means of telling if you saw a single light and nothing more what the object was?

A. I would sound my whistle.

Q. Would you have any means of knowing from eyesight?

A. No; I might not.

Q. If you saw the single white light and nothing more?

A. I would sound the whistle.

Q. You could not tell whether it was a stationary object or whether it was on a boat?

A. No, sir.

Q. Without getting near enough to see the object itself?

A. Or receiving a reply.

Q. If that object were about in the centre of the current and you were about in the centre of the current going down the river and saw this boat ahead what would you do under such circumstances?

A. I would slow down to ascertain what the object was.

Q. Could you ascertain whether it was moving so long as you yourself were in motion unless it was passing directly across your bow?

A. No, sir.

Q. You could not tell whether it was due to your own motion or the object?

A. No, sir.

Q. That was the reason you would slow down and stop?

A. Yes, sir.

258 Q. Is there any reason why under such circumstances you should take one side rather than the other if you decided to go by the object?

A. Yes, sir.

Q. What is that reason?

A. The rules of the road.

Q. By that you refer to the sailing and steering vessels?

A. To go to the right.

Q. In case it were a moving object you would pass to the right of it even if you were moving head and head?

A. Yes, sir. I have navigated up the James and up the Delaware, and have been up the Chesapeake and various rivers during the war to Mobile and New Orleans and the Potomac.

Q. You have sailed in narrow channels outside of rivers?

A. Yes, sir.

Q. Does the same rule apply to navigation in a narrow channel?

A. Yes, sir; same rule applies to the right.

Recross-examination by Mr. CANTINE:

Q. Will you refer us to the rule which says you must go to the right?

A. Yes, sir. The two red signals or two red lights or vessels meeting head on, they are to put their helm aport and go to the right.

Q. Does not that rule say that they must be head on or nearly head on, and vessels will not be considered to be head on unless they are within two points?

A. I don't know about that. She must be on one bow or the other or head on.

Q. Don't you understand that to be the rule?

A. I understand that to be the rule.

Q. There is not any of the testimony which you have given here which you mean to say that is in direct conflict with the rules—that your testimony should be taken superior to the rules?

A. I might say the practice. I don't know what all the law may be on the point; I say the practice.

259 Redirect examination by Mr. WILSON:

Q. Which boat is it the duty of under the regulations to keep out of the way?

A. The one which blows the whistle first determines the course.

Defence rests.

JAMES FITZPATRICK sworn for plaintiff and testified:

Examined by Mr. CANTINE:

I reside in Williamsburg, Brooklyn. My business is an engineer and machinist; have been engineer nearly fifteen years.

Q. On vessels—on steamboats?

A. I have been engineer on a great many steamships. I was the engineer on the yacht Yosemite. On the night of the collision, July 14, 1882, I was in charge of the engine from New York up to Catskill. I had an assistant engineer.

Q. Do you recollect on the trip up from New York up to the time of this collision that there was any loss of time by reason of "slowing down" your engine?

—. ——.

Q. How much time was lost, in your opinion, by slowing down, contemplating whether you would lay up over night?

A. It must have been 15 or 20 minutes lost in the whole thing.

Q. Do you recollect receiving any bells just before the time of the collision?

—. ——.

Q. What place did you receive, just before the collision, two bells to stop?

A. About 15 or 18 feet from the engine-room. I could hear the bells plainly. I went down below as quick as I could. I went right in the engine-room; the assistant engineer was in the engine-room.

Q. Had he commenced to work the engine in answer to those bells?

A. Yes, sir; we had her stopped.

Q. After you got in to the engine-room did you hear any other bells?

260 A. Before I got quite to the engine-room I heard the other two bells. Those two bells were to back.

Q. Did those four bells come consecutively as fast as they could reasonably have been rung?

A. No, sir; they did not. There was a little intermission between the first two and the last two. I had not worked the engine any back when I felt the shock of the collision. I think the shock came a little the first, but we were about in the act of backing just about the same time. As near as I can tell, we struck her a little before we backed.

Mr. Cantine read from the testimony of Mr. Craig before the steamboat inspectors as follows:

"When we were within about 500 or 600 feet of her she gave us two whistles and changed her course to go to the eastward."

And from the subsequent examination as follows:

"The next whistle I blowed, which he answered, I heaved my wheel aport and canted the Yosemite a little more inshore. I didn't see the approaching steamboat's green light; I saw all her other lights. When we were within 500 or 600 feet of each other, I should judge, the Vanderbilt took a rank sheer right across our bow and showed us her green light. He blowed two whistles."

Also as follows:

"In about a minute and a half I blowed another whistle. That was answered with one whistle."

Plaintiffs rest.

Models of the Yosemite and Charlotte Vanderbilt were put in evidence upon the trial and may be used by either party upon the argument of the appeal in any appellate court.

Testimony closed.

The defendant moved upon the whole testimony to dismiss the complaint upon the grounds stated when plaintiff rested and also on the grounds following: First, that the Yosemite's lights were right because she was not a coasting vessel; second, that she
261 was not engaged in the coasting trade, and all coasting vessels are necessarily engaged therein; third, that the Yosemite did not come under rule 7 of section 4233 of the Revised Statutes; fourth, that the Vanderbilt was negligent because it now appears affirmatively and by such testimony as makes it here a fact in law that the two whistles given by the Yosemite after the two whistles of the Vanderbilt were not intended and were not given in answer to the two whistles of the Vanderbilt, but were the first two whistles of three alarm whistles which the pilot of the Yosemite started to blow, and that the crash and collision came before he could blow the three alarm whistles, because the blowing of the two whistles of the Vanderbilt and the attempt to blow three alarm whistles on the Yosemite and the rank sheer of the Vanderbilt across her bow and the actual collision were so near together the three alarm whistles could not be blowed nor completed.

The court denied the motion and defendant excepted.

Mr. Marsh summed up for the defendant.

Mr. Cantine summed up for the plaintiff.

Judge Edwards charged the jury as follows:

On the night of July 14th, 1882, the Charlotte Vanderbilt, engaged in domestic commerce, owned by the plaintiffs' testator, Mr. William Donahue, was proceeding from Catskill to New York, and upon the same evening the yacht Yosemite, owned by the defendant, William Belden, with her crew, owner, and some invited guests, was proceeding up the river from New York city to Catskill. When at a point about one mile north of the Esopus Meadow light-house a collision occurred between these two boats, the yacht Yosemite striking the Vanderbilt about right angles and about in front
262 of the forward gangway and coming out in front of the forward gangway on the port side, causing almost a total wreck. The contention of the plaintiff is that that collision was occasioned by the negligence of this defendant, and that for such negligence the defendant should respond to them in damages.

In order to maintain this action the plaintiff must prove by a preponderance of evidence that this injury of which he complains was caused by the sole negligence of the defendant—that is, he must affirmatively establish to your satisfaction, first, that the defendant was guilty of negligence on that occasion which produced this injury, and that he himself was free from any negligence which contributed even in the slightest degree to the injury for which he here seeks redress. You will address yourselves in your deliberations, then, to the first proposition: Was the defendant guilty of negligence? The particular negligence complained of here upon this occasion was the omission of the Yosemite upon that occasion to display the proper signal lights, what are commonly known in the law as the central range lights, one upon the front and the other in the rear, the one in the rear having a position 15 feet higher than the one in the front. It is conceded that the Yosemite had not those lights upon this occasion known as the central range lights. The absence of those lights is a circumstance from which, in connection with all the other facts in the case, you may infer negligence contributing or tending to produce this injury. I charge you as matter of law that the Yosemite upon that occasion was bound to have those lights which I have described to you as the central range lights, and the absence of those statutory signals was upon her part negligence; but it does not follow from that, gentlemen, that the defendant is liable here in this action. You must further find that it was negligence which produced the injury complained of here or which in connection with other facts and circumstances did
263 produce that injury and was the sole cause of it, because if it had no such tendency, then notwithstanding it was a violation of law for the Yosemite to be navigating the Hudson river without the statutory lights, so far as the purposes of this case are concerned it is entirely immaterial, and the defendant is absolved.

It is claimed by the plaintiffs here that by reason of the absence of those two lights the pilot of the Charlotte Vanderbilt was misled to his injury; that he saw in the distance the one high light and the other two lower lights, which he mistook for the lights of a tow,

the high light, as he supposed, being the light of a tug, the two lower lights the lights of the canal-boats. The theory of the defendant is that had he been competent he could not have mistaken that for a tow; that a tow requires two vertical lights, and that those lights were observable at that distance; that is met upon the other side by saying that the two lights at that distance were so blended as to appear as one light, and that in this way he was deceived. I leave that question for your consideration, whether the defendant was guilty of negligence—whether the failure to display these statutory signals produced the injury of which complaint is here made. If you find that there was no negligence upon that occasion upon the part of defendant, then he would be entitled to your verdict.

If you find to the contrary that he was guilty of negligence, then you come to the second and further consideration: Was this plaintiff in the management of the Vanderbilt, through his employees, guilty of any negligence which contributed in any degree to this injury? If he was, then the plaintiff cannot recover. It is claimed upon the part of the defendant that it was a gross error, or that it was negligence, at least, upon the part of the Vanderbilt, in the positions in which the Vanderbilt and Yosemite were placed just at that particular time, to blow the two whistles and to take a rank sheer and cross the bows of the Yosemite. It is claimed
264 by him that upon that occasion, at a distance of some 500 yards or thereabouts (at any rate, at a certain distance), the red light of the Vanderbilt was seen by the Yosemite and the red light of the Yosemite was seen by the Vanderbilt, which indicated to them that they were passing each other upon the right; that at that time a signal was given by the Yosemite to keep to the right—that each should keep to the right; that this signal was answered by the Vanderbilt by giving one whistle, which was an acceptance of the proposition upon the part of the Yosemite that each should keep to the right; that had that been carried out and each boat kept to the right they were in such relative positions in regard to each other that they would have passed each other in safety; that in disregard of that signal or its acceptance, when at a point where it was dangerous so to do, the pilot upon the Vanderbilt gave two signals and immediately took this rank sheer and crossed the bow of the Yosemite, and in that way produced this collision.

Upon the part of the plaintiff it is claimed that at the time of the two signals being given it was impracticable to carry out the agreement which had been made by the signal which had been given and accepted of the one whistle, and that he was compelled, that his safety and good seamanship required, that he should give these two signals which indicated that then each one should sheer to the left instead of the right. He says that he heard these two signals in response by the Yosemite, which he took to be an acceptance of his proposition that each should go to the left; that he thereupon and at about the same time *that he* sheered his vessel to the left in accordance with this proposition, and had the defendant carried out that agreement which was made by the acceptance of the two

signals to turn to the left this accident would have been avoided. That is entirely a question of fact for you to consider.

265 The defendant says that he did not blow two whistles in response; that they were then in a position where it was impracticable for each to turn to the left contrary to their previous agreement; that he blew two whistles and started to blow the third, which was a signal of danger, and instead of being an acceptance was a repudiation of the proposition made upon the part of the Vanderbilt; but before he had an opportunity to blow the third whistle they were in such close proximity at that time that the Yosemite struck the Vanderbilt nearly at right angles.

Now, if the pilot on the Vanderbilt upon that occasion in attempting to change his course and to cross the bow of the Yosemite was guilty of negligence, if it was an improper thing for him to do under the particular circumstances of that occasion, and that act upon his part contributed to this accident, then he comes under the general principle of contributory negligence, which prevents his recovering. That I leave entirely to you to consider as a question of fact. In a question of negligence — whether those who are in the management of these respective boats were guilty of negligence or not or whether they did or omitted to do that which care and prudence required them to do or not to do. It is further claimed upon the part of the defendant that it was the duty of the pilot of the Vanderbilt if he did not understand the signals to stop, and that — by reason of his omission to stop, which was required of him, as is claimed on the part of the defendant, by rule 3, this injury was produced, which might otherwise have been averted, then he was guilty of contributory negligence. Rule 3 requires "That if, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals given or answered erroneously or from other causes, the pilot so in doubt shall immediately signify the same by giving several short

266 and rapid blasts of the steam whistle; if the vessels shall be approaching within one-half mile of each other, both shall immediately be slowed to a stop until the proper signals — given, answered, and understood or until the vessels shall have passed each other."

Now, I charge you, in respect to this omission of the pilot on the Vanderbilt, if he did not understand the signals; if his conduct upon that occasion was in violation of rule 3, which I have read to you, then you have the further question whether his omission to do that thing was negligence—that is, whether he would have averted this disaster in case he had stopped upon that occasion and complied with the rule.

It is also claimed that the pilot upon the Vanderbilt was not a competent pilot. It was the duty of the plaintiffs' testator, Mr. Donohue, to have competent men to manage his boat. If any of the officers or crew in charge of his boat in this case; if Whittaker, the pilot, was incompetent; if you find from the evidence that he was not a proper man in that position, and that his incompetency

upon this occasion produced or tended to produce this injury, then the plaintiff has been guilty of contributory negligence.

In respect to the proper lookout the same rule obtains. It was the duty of the lookout to be vigilant and to look out upon the Vanderbilt. He is placed there for the purpose of observing approaching vessels and of reporting to the pilot. It is a question of fact for you to determine, under all the circumstances of this case, whether or not the pilot, Post, discharged properly his duty upon that occasion, and, if he did not, whether the want of a proper discharge of his duty contributed to this injury.

If, then, you find that the defendant has been guilty of negligence; if you find that the plaintiff has been free from negligence which contributed to this injury, you are then brought to the third and last consideration, which is the question of damages; if you
267 find, however, that notwithstanding the negligence of the defendant the plaintiff himself, through his officers or employés upon the Vanderbilt, was guilty of negligence, then the defendant is entitled to your verdict.

If you get to the question of damages and find the plaintiff entitled to recover you will first find in your judgment what was the value of the boat Vanderbilt at the time of this disaster, on the 14th of July, 1882; then compute the interest on that sum from that time until this and add it to the principal, and your verdict should be the sum total. The question of interest does not follow as a legal right; you may allow interest as damages. If you do allow interest, which you may as damages, then you are to say so.

The defendant excepted to that portion of the charge which related to the necessity of the yacht carrying central range lights.

The defendant requested the court to charge as follows:

As to Lights.

1. If the yacht Yosemite was not a "coasting vessel" within the rules and regulations prescribed by Congress, then the lights she carried and displayed at the time of the collision were those authorized by law, and she was free from blame or liability in that regard.

The court refused so to charge, and defendant excepted.

2. That a coasting vessel is one engaged in the coasting trade.

The court refused so to charge, and defendant excepted.

3. The defendant then requested the court to submit to the jury the question whether the Yosemite was at the time engaged in the coasting trade and whether she was in fact a coasting vessel.

The court refused to submit the question to the jury, and defendant excepted.

268 4. The defendant then requested the court to charge that if the Yosemite was not a coasting vessel at that time, then she carried and displayed the lawful lights and is free from all blame in that regard.

The court refused so to charge, and defendant excepted.

As to Contributory Negligence Generally.

5. If the *the* persons navigating the Vanderbilt contributed by their negligence to the collision, then the plaintiff cannot recover.

The court so charged.

6. To enable the plaintiff to recover, the parties navigating the Vanderbilt must have been free from any act contributing to the injury and must prove it.

The court so charged.

The defendant further requested the court to charge as follows:

7. If before or at the time of the Yosemite's first whistle Whitaker, the pilot of the Vanderbilt, saw the red light of the yacht he was bound to go to the west of the yacht, and it makes no difference whether the light was bright or dim if he saw it.

The court so charged.

As to the Whistles.

The defendant further requested the court to charge as follows:

8. As the proof is undisputed that the steamboat Vanderbilt and the yacht Yosemite were approaching each other head and head, or nearly so, the law prescribes their duties respectively in regard to blowing their whistles.

The court refused so to instruct the jury, and the defendant excepted.

9. If the yacht Yosemite, as the vessels were approaching each other, blew a single whistle, and the steamboat Vanderbilt
269 answered it by a single whistle, the course which each was thereupon bound to pursue became thereby determined, and each vessel was bound to pass to its own right—that is, to the port side of the other vessel, which would have been the Vanderbilt to the west and the yacht Yosemite to the east.

The court refused so to instruct the jury, and defendant excepted.

10. The pilot who first blew the first whistle thereby had the right to and did determine the course which each was then to adopt.

The court refused so to instruct the jury, and defendant excepted.

11. The blowing of the single whistle by the steamboat Vanderbilt after the first single whistle from the yacht Yosemite was an acceptance by the steamboat Vanderbilt of the election of the course so adopted by the yacht Yosemite, and it then became the duty of the steamboat Vanderbilt to pass to the port or western side of the Yosemite.

The court refused so to instruct the jury, and defendant excepted.

12. After the single whistle from the Yosemite had been accepted by the single whistle from the Vanderbilt the Vanderbilt had no authority or right to blow two whistles or to alter the legal agreement made by the single whistle that each should pass on the port side of the other.

The court refused so to instruct the jury, and defendant excepted.

13. As the evidence is clear and undisputed, as given on behalf both the plaintiff and the defendant, that the yacht Yosemite blew the first single whistle, and that thereupon the steamboat Vanderbilt blew her single whistle, it follows that the Vanderbilt in blowing thereafter the two whistles violated the law and became thereby guilty of contributory negligence.

The court refused so to instruct the jury, and defendant excepted.

270 14. Even if the Vanderbilt, after having by one whistle accepted the one whistle of the yacht, had a right to change the conditions and course by a blast of two whistles, yet, unless these two whistles were given in time to enable the yacht to go in safety to the west of the Vanderbilt, they would tend to confuse and complicate the situation, and the Vanderbilt was, in that event, guilty of negligence in giving the signal of two whistles.

The court refused so to instruct the jury, and defendant excepted.

15. The two whistles blown by the yacht Yosemite after the two whistles of the Vanderbilt were a part and the first two of three alarm whistles. This is adequately proved, and is not contradicted, and is to be taken by you as a fact. They were not an acceptance of the two whistles of the steamboat Vanderbilt, nor a consent to change the contract and course.

The court refused so to instruct the jury, and defendant excepted.

16. The collision came after the second of the three alarm whistles were given and before the third was or could be reasonably given.

The court refused so to instruct the jury, and defendant excepted.

17. If the collision occurred so quickly after the blowing of the two whistles of the Vanderbilt that there was not time then, considering their velocity and their nearness to each other and the rank eastward sheer of the Vanderbilt, for the yacht Yosemite to have steered to the west of the Vanderbilt in such manner as to have avoided a collision, then the blowing of the two whistles by the Vanderbilt was an act of negligence which will prevent the plaintiff from recovering.

The court refused so to instruct the jury, and defendant excepted.

271 *As to the Rank Sheer of the Vanderbilt and Her Change of Course as She Blew Her Two Whistles.*

18. It is to be taken by you as fact, for it is proved by the plaintiff and is not contradicted, that at or about the time the Vanderbilt blew her two whistles (fols. 273–'4) her pilot changed her course by heaving her wheel hard-a-starboard and sheering her right to the east shore of the Hudson river; that he sheered her across the river as fast as he could heave her.

The court refused so to instruct the jury, and the defendant excepted.

19. It is also, and for the same reason, to be taken by you as a fact that from the time the two vessels came in sight of each other's

lights up to the time of the blowing of the two whistles by the steamboat Vanderbilt the Vanderbilt was headed down the river and towards Dinsmore's residence and kept on that course without change until just after or simultaneously with her blowing of the two whistles.

The court refused so to instruct the jury, and defendant excepted.

20. It is also to be taken as a fact, for it is proved by competent witnesses for the defendant and is not contradicted nor impaired, that the yacht Yosemite at the time she blew her single whistle and its answer by the Vanderbilt's single whistle was heading easterly and nearly on the Rhinebeck bluff, and thereupon turned her bow somewhat more easterly so that she then headed on or more nearly on the Rhinebeck bluff.

The court refused so to instruct the jury, and defendant excepted.

21. It is also to be taken as a fact by you that by the rank sheer of the steamboat Vanderbilt to the east she was taken out of the course she had been before that pursuing, and that she was thereby brought around on a swing into a course at or nearly at right angles with her former course.

272 The court refused so to instruct the jury, and defendant excepted.

22. And that she was thus brought to a position at or nearly at right angles across the bows and course of the yacht Yosemite.

The court refused so to instruct the jury and defendant excepted.

23. If these two vessels would have passed each other in safety and without collision had they kept on their course as it was when the Yosemite blew her single whistle and the Vanderbilt accepted it by her single whistle, then the acknowledged change of the course by the steamboat Vanderbilt by her rank sheer to the east, which brought her across the bows of the yacht Yosemite, was an act of carelessness which should prevent the plaintiffs' recovery.

The court refused so to instruct the jury, and the defendant excepted.

24. If the Vanderbilt, by her rank sheer to the east and consequent change of course, upon her blowing the two whistles brought herself across the course of the yacht Yosemite and thereby contributed to the collision, the plaintiffs cannot recover.

The court so charged.

25. If the steamboat Vanderbilt, being a vessel 28 feet wide and about 207 feet in length, by her rank sheer to the east, upon her blowing her two whistles, after her acceptance by a single whistle of the single whistle of the Yosemite, notwithstanding her swing around to the eastward and her turn across the river, only then brought herself in such a position across the bow of the Yosemite that she was struck at right angles or nearly so only some 55 feet from her bow, forward of the forward gangway, it is for you to say whether, if she had continued her course down the river and had not sheered across it, the two vessels would have passed in safety,

273 and if they would have so passed, then the Vanderbilt was culpable and plaintiffs cannot recover.

The court refused so to instruct the jury, and defendant excepted.

26. The burden of proof is on the plaintiff to show affirmatively that those navigating the Vanderbilt were free from any fault that contributed to the collision.

The court so charged.

As to the Vanderbilt's Pilot.

27. The steamboat Vanderbilt was bound by law to have on the night in question a pilot in charge of her who possessed the requisite knowledge and skill and who was trustworthy and faithful.

The court so charged.

28. Such pilot was required to know the rules and regulations of the Government for the safety of navigation.

The court so charged.

29. Such pilot should also possess the necessary knowledge of navigation on the waters on which he plied in regard to lights, the laws of motion, the course of the channel, the points of compass, distances, the meaning of signals and whistles, and the speed of his and approaching vessels, which is called for in ordinary pilotship.

The court so charged.

30. If such pilot lacked these ordinary qualifications and was below the requisite and lawful standard, and such lack contributed to the collision, it is negligence on the part of those navigating the steamboat Vanderbilt.

The court so charged.

31. If through such lack of qualifications of the Vanderbilt's pilot the collision occurred, ensued, or was contributed to, then the owners of the Vanderbilt were in fault and the plaintiffs cannot recover.

The court so charged.

274 32. In this case if Whitaker, the pilot of the steamboat Vanderbilt, was incompetent to fill the position of pilot of the steamboat in the night on the Hudson river and, through ignorance, want of skill, or inattention, so managed the Vanderbilt that her collision with the yacht Yosemite was contributed to, then the plaintiffs herein cannot recover.

The court so charged.

33. Such pilot should also possess the necessary knowledge of navigation on the waters on which he plied in regard to lights, the laws of motion, the course of the channel, the points of compass, distances, the meaning of signals and whistles, and the speed of his and approaching vessels, which is called for in ordinary pilotship.

The court so charged.

34. If such pilot lacked these ordinary qualifications and was below the requisite and lawful standard, and such lack contributed to the collision, it is negligence on the part of those navigating the steamboat Vanderbilt.

The court so charged.

35. If through such lack of qualifications of the Vanderbilt's pilot

the collision occurred, ensued, or was contributed to, then the owners of the Vanderbilt were in fault and the plaintiffs cannot recover.

The court so charged.

36. In this case if Whitaker, the pilot of the steamboat Vanderbilt, was incompetent to fill the position of pilot of the steamboat in the night on the Hudson river and, through ignorance, want of skill, or inattention, so managed the Vanderbilt that her collision with the yacht Yosemite was contributed to, then the plaintiffs herein cannot recover.

The court so charged.

As to the Vanderbilt's Lookout.

37. The law required the steamboat Vanderbilt, being
275 under way in the night at the time of this collision, to have on board a competent and skillful lookout, whose duty it was to watch approaching vessels, determine their character as well as he could, and immediately on their discovery signal them to the pilot.

The court so charged.

38. The true and lawful position for this lookout was on the bow of his boat or at some position forward where he could advantageously discern the coming vessels, and he was required to be expert and diligent in watching and detecting and signaling the lights of all vessels approaching the Vanderbilt.

The court so charged.

39. This lookout had no business in the wheel-house nor in helping the wheelman.

The court refused so to instruct the jury, and defendant excepted.

40. While on duty the attention of the lookout should not be diverted by any other occupation on the boat from his duties as a watchman for lights and a lookout, and if he went into the wheelhouse or gave help at the helm during the time the Yosemite and Vanderbilt were approaching and near each other he was unlawfully engaged and violated his duty as a lookout, and it was negligence on the part of the Vanderbilt.

The court refused so to instruct the jury, and defendant excepted.

41. It is to be taken as a fact by you, for it is proved on the plaintiffs' behalf and is not contradicted, that Mr. Post, the lookout on the Vanderbilt, assisted the pilot, Whitaker, in the wheelhouse at the wheel in heaving it hard-a-starboard at or about the time of the two whistles by the Vanderbilt (fol. 277).

The court so charged.

42. It is also to be taken by you as true that Post, the lookout of the Vanderbilt, went into the wheel-house that night be-
276 tween Port Ewen and Rondout or above there and stayed there until the collision (fols. 371, 317).

The court so charged.

43. And also that Post, the lookout, had hold of the wheel on the

port side at the time he and the pilot got the first single whistle from the Yosemite (fols. 336, '7).

The court refused so to instruct the jury, and defendant excepted.

44. It is also to be taken as a fact by you that on the discovery by the pilot, Whitaker, of the red light of the Yosemite he exclaimed to Edward Post, the lookout, and who was then aiding him at the wheel, "Ed., there's a red light" (fols. 337, '8).

The court so charged.

45. Also that the pilot, Whitaker, did not receive any signals or information from the lookout, Post, as to the red light, but made its discovery for himself, without the aid of the lookout. (*Id.*)

The court refused so to instruct the jury, and defendant excepted.

46. If from the time when the lights of the yacht Yosemite were visible from the steamboat Vanderbilt she had no lookout stationed on deck in front of the pilot-house, and if such absence in any way contributed to the collision, then those navigating the Vanderbilt were guilty of contributory negligence and the plaintiffs cannot recover.

The court so charged.

47. If at the time of the collision and just preceding it the man Post, who is sworn to have been the lookout of the Vanderbilt, was in the wheel-house and helping the pilot at the wheel, then he was out of the position required by law and not in his proper place nor engaged in his proper duty.

(COURT:) I will charge that, with the modification: If at the time of the collision and just preceding it the man Post — helping the pilot at the wheel, then he was out of the position required by law
277 and not in his proper place—not engaged in his proper duty.

I will charge that part of it, that he was not engaged in his proper duty.

48. And if such position in the wheel-house and absence from his lawful post of observation, and assistance at the wheel obscured or interfered with his view, observation, and appreciation of the approaching yacht and her lights and at all contributed to bring the boats in contact, then this was contributory negligence on the part of those navigating the Vanderbilt and the plaintiff cannot recover.

The court so charged.

49. The jury are bound, in the discharge of their duty, to lay aside all consideration of relative or actual or supposed wealth of the parties. While there is no evidence on that subject, you would be bound to be wholly uninfluenced by it if there were any such evidence in the case.

The court so charged.

50. The jury are bound to lay out of view and not to be affected by any former trial of this case. This is to be tried by you only on the evidence submitted to you.

The court so charged.

Plaintiff's counsel requested the court to charge that if there was

a total absence of lookout on this night, or if the lookout was not stationed in his proper place, or if he was an incompetent lookout, in either or all of those events, if the jury believe that the collision and loss was not caused or contributed to because by such absence, then the plaintiff can recover.

(COURT:) I will charge, as you request, that the absence of any statutory signal or the negligence to do any duty does not constitute negligence unless it in some way or tended in some way to contribute to or producing the jury. The mere negligence of duty is immaterial unless it is a producing cause.

278 The jury brought in a verdict for the plaintiff in the sum of $25,910.

Defendant moved for a new trial on the minutes upon all the grounds stated in the code.

Motion denied. Defendant excepted.

The plaintiff was granted an extra allowance of $800.

And thereafter judgment on the verdict was entered in favor of the plaintiff.

From the order denying a new trial and from the judgment defendant appealed to the general term of this court.

279 *Pilot Rules for Lakes and Seaboard.*

Rules and regulations for the government of pilots navigating seas, gulfs, lakes, bays, sounds, or rivers, except rivers flowing into the Gulf of Mexico, and their tributaries. Revised and adopted by the board of supervising inspectors, June 10, 1871, as authorized by act of Congress "to provide for the better security of life on board of vessels propelled in whole or in part by steam, and for other purposes;" approved February 28, 1871, to take effect January 1, 1872. (Amended January, 1875, 1881, and 1882.)

Rule I.—When steamers are approaching each other "head and head," or nearly so, it shall be the duty of each steamer to pass to the right, or port side of the other; and the pilot of either steamer may be first in determining to pursue this course, and thereupon shall give, as a signal of his intention, one short and distinct blast of his steam whistle, which the pilot of the other steamer shall answer promptly by a similar blast of his steam whistle, and thereupon such steamers shall pass to the right, or port side of each other. But if the course of such steamers is so far on the starboard of each other as not to be considered by pilots as meeting "head and head," or nearly so, the pilot so first deciding shall immediately give two short and distinct blasts of his steam whistle, which the pilot of the other steamer shall answer promptly by two similar blasts of his steam whistle, and they shall pass to the left, or on the starboard side, of each other.

NOTE.—In the night, steamers will be considered as meeting "head and head" so long as both the colored lights of each are in view of the other.

Rule II.—When steamers are approaching each other in an oblique direction (as shown in diagram of the fourth situation), they shall pass to the right of each other, as if meeting "head and head," or nearly so, and the signals by whistle shall be given and answered promptly as in that case specified.

Rule III.—If, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam whistle; and if the vessels shall have approached within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerage-way until the proper signals are given, answered, and understood, or until the vessels shall have passed each other.

Rule IV.—When steamers are running in a fog or thick weather, it shall be the duty of the pilot to cause a long blast of the steam whistle to be sounded at intervals not exceeding one minute.

Steamers, when drifting or at anchor, in the fair-way of other vessels in a fog or thick weather, shall ring their bells at intervals of not more than two minutes.

Rule V.—Whenever a steamer is nearing a short bend or curve in the channel, where, from the height of the banks or other cause, a steamer approaching from the opposite direction cannot be seen for a distance of half a mile, the pilot of such steamer, when he shall have arrived within half a mile of such curve or bend, shall give a signal by one long blast of the steam whistle, which
280 signal shall be answered by a similar blast, given by the pilot of any approaching steamer that may be within hearing. Should such signal be so answered by a steamer upon the farther side of such bend, then the usual signals for meeting and passing shall immediately be given and answered; but if the first alarm signal of such pilot be not answered, he is to consider the channel clear and govern himself accordingly.

Rule VI.—The signals, by the blowing of the steam whistle, shall be given and answered by pilots, in compliance with these rules, not only when meeting "head and head," or nearly so, but at all times when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port.

Rule VII.—When two steamers are approaching the narrows known as "Hell Gate," on the East river at New York, side by side, or nearly so, running in the same direction, the steamer on the right or starboard hand of the other (when approaching from the west), when they shall have arrived abreast of the north end of Blackwell's island, shall have the right of way, and the steamer on the left or port side shall check her way and drop astern. In like case when two steamers are approaching from the east, and are abreast at Negro point, the steamer on the right or starboard hand of the other shall have the right of way, and shall proceed on her course without interference, and the steamer on the port side of the

other shall keep at a safe distance astern (not less than three lengths) until both steamers have passed through the difficult channel.

Rule VIII.—When steamers are running in the same direction, and the pilot of the steamer which is astern shall desire to pass on the right or starboard hand of the steamer ahead, he shall give one short blast of the steam whistle as a signal of such desire and intention, and shall put his helm to port; and the pilot of the steamer ahead shall answer by the same signal, or, if he prefer to keep on his course, he shall give two short and distinct blasts of the steam whistle, and the boat wishing to pass must govern herself accordingly, but the boat ahead shall in no case attempt to cross her bow or crowd upon her course.

N. B.—The foregoing rules are to be complied with in all cases except when steamers are navigating in a crowded channel or in the vicinity of wharves; under such circumstances steamers must be run and managed with great caution, sounding the whistle as may be necessary, to guard against collision or other accidents.

Section 4233, Revised Statutes.—Rule twenty-four. In construing and obeying these rules, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case rendering a departure from them necessary in order to avoid immediate danger.

Rule IX.—All double-ended ferry-boats on lakes and sea-board shall carry a central range of clear, bright, white lights, showing all around the horizon, placed at equal altitudes forward and aft, also such side lights as specified in section 4233, Revised Statutes, rule three, paragraphs B and C.

Local inspectors in districts having ferry-boats shall, whenever the safety of navigation may require, designate for each line of such boats a certain light, white or colored, which shall show all around the horizon, to designate and distinguish such lines from each other, which light shall be carried on a flag-staff amidship, fifteen feet above the white range-lights.

The line dividing jurisdiction between pilot rules on western rivers and lakes and sea-board at New Orleans shall be the lower limits of the city.

281 *Extracts from Revised Statutes.*

SEC. 4233. The following rules for preventing collisions on the water shall be followed in the navigation of vessels of the navy and of the mercantile marine of the United States:

Steam and sail vessels.

Rule one. Every steam-vessel which is under sail and not under steam shall be considered a sail-vessel; and every steam-vessel which is under steam, whether under sail or not, shall be considered a steam-vessel.

Lights.

Rule two. The lights mentioned in the following rules, and no others, shall be carried in all weather, between sunset and sunrise:

Rule three. All ocean-going steamers and steamers carrying sail, shall, when under way, carry—

(A) At the foremast-head, a bright white light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side.

(B) On the starboard side, a green light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

(C) On the port side, a red light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side.

The green and red lights shall be fitted with inboard screens, projecting at least three feet forward from the lights, so as to prevent them from being seen across the bow.

Rule four. Steam-vessels, when towing other vessels, shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam-vessels. Each of these mast-head lights shall be of the same character and construction as the mast-head lights prescribed by rule three.

Rule five. All steam-vessels, other than ocean-going steamers, and steamers carrying sail, shall, when under way, carry on the starboard and port sides lights of the same character and construction and in the same position as are prescribed for side lights by rule three, except in the case provided in rule six.

282 Rule six. River steamers navigating waters flowing into the Gulf of Mexico and their tributaries shall carry the following lights, namely: One red light on the outboard side of the port smoke pipe, and one green light on the outboard side of the starboard smoke pipe. Such lights shall show both forward and abeam on their respective sides.

Rule seven. All coasting steam-vessels, and steam-vessels other than ferry-boats and vessels otherwise expressly provided for, navigating the bays, lakes, rivers, or other inland waters of the United States, except those mentioned in rule six, shall carry the red and green lights, as prescribed for ocean-going steamers; and, in addition thereto, a central range of two white lights; the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel. The head light shall be so constructed as to show a good light through twenty points of the compass, namely: From right ahead to two points abaft the beam on either side of the vessel; and the after light so as to show all around the

horizon. The lights for ferry-boats shall be regulated by such rules as the board of supervising inspectors of steam-vessels shall prescribe.

Diagrams.

The following diagrams are intended to illustrate the working of the foregoing system of colored lights, and are to be used by pilots in connection with the rules, as sailing directions on meeting or nearing other steamers:

First situation.

Here the two colored lights, visible to each, will indicate their direct approach ("head and head") toward each other. In this situation

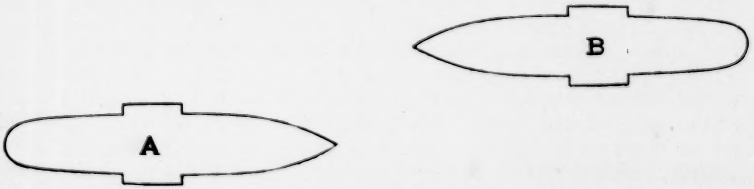
it is a standing rule that both shall put their helms to port and pass to the right, each having previously given one blast of the steam whistle.

Second situation.

Here the green light only will be visible to each, the screens preventing the red light from being seen. They are therefore passing to starboard, which is rulable in this situation, each pilot having previously signified his intention by two blasts of the steam whistle.

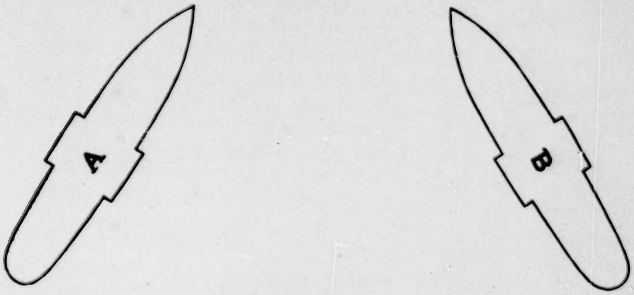
283 Third situation.

A and B will see each other's red light only, the screens preventing the green lights from being seen. Both vessels are evidently passing to port, which is rulable in this situation, each pilot having previously signified his intention by one blast of the steam whistle.



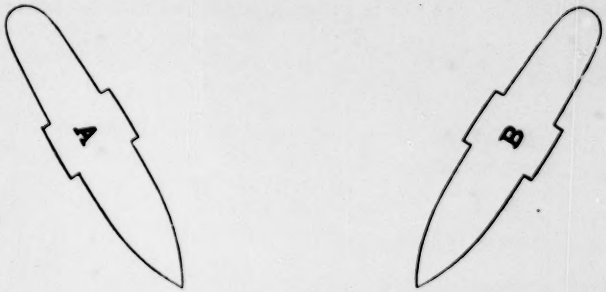
Fourth situation.

This is a situation requiring great caution; the red light of B in view to A, and the green light of A in view to B, will inform both that they are approaching each other in an oblique direction. A should put his helm to port, and pass astern of B, while B should continue on his course or port his helm, if necessary to avoid collision, each having previously given one blast of the steam whistle, as required by the rules when passing to the right.



Fifth situation.

This is a situation requiring great caution; the red light of A in view to B, and the green light of B in view to A, will inform both

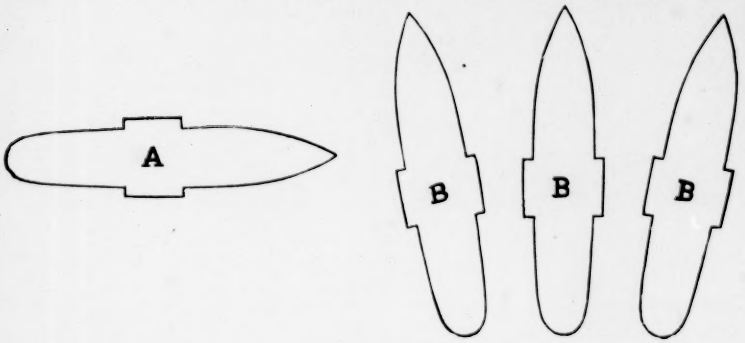


284 that they are approaching each other in an oblique direction. B should put his helm to port, and pass astern of A, while A should continue on his course or port his helm, if necessary to avoid collision, each having previously given one blast of the steam-whistle, as required by the rules when passing to the right.

Sixth situation.

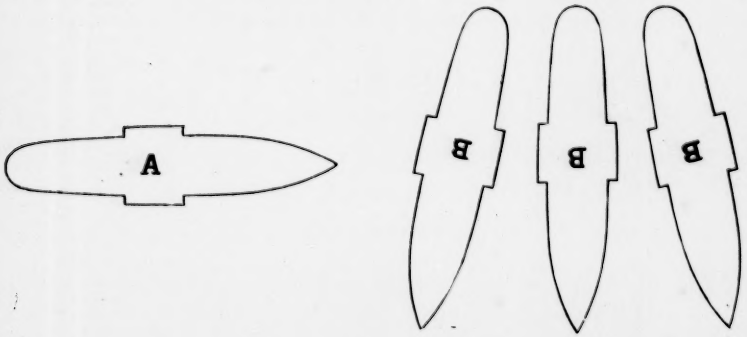
In this situation the steamer A will only see the red light of the steamer B in whichever of the three positions the latter may happen to be, because the green light will be hid from view; A will be assured that the port side of B is toward him, and that the latter is therefore crossing the bows of A in some direction to port; A will

therefore (if so near as to fear collision) port his helm with confidence, and pass clear. On the other hand, the steamer B, in either of the three positions, will see both the red and green lights of A, by which the former will know that a steamer is approaching directly toward him; B will act accordingly and keep away if necessary.



Seventh situation.

In this situation the steamer A will only see the green light of the steamer B, in whichever of the three positions the latter may happen to be, because the red light will be hid from view; A will be assured that the starboard side of B is toward him, and that the latter is therefore crossing the bows of A in some direction to starboard; A will



285 therefore (if so near as to fear collision), starboard his helm with confidence and pass clear. On the other hand, the steamer B, in either of the three positions, will see both the red and the green lights of A, by which the former will know that a steamer is approaching directly toward him; B will act accordingly, and keep away if necessary.

The manner of fixing the colored lights should be particularly attended to. They will require to be fitted each with a screen, of wood or canvas, on the inboard side, and close to the light, in order

to prevent both being seen at the same moment from any direction but that of right ahead to two points abaft the beam.

This is important, for without the screens any plan of bow lights would be ineffectual as a means of indicating the direction of steering. This will be readily understood by a reference to the preceding illustrations, where it will appear evident that in any situation in which two vessels may approach each other in the dark, the colored lights will instantly indicate to both the relative course of each; that is, each will know whether the other is approaching directly or crossing the bows either to starboard or port.

This intimation, with the signals by whistle, as provided, is all that is required to enable vessels to pass each other in the darkest night with almost equal safety as in broad day. If at anchor, all vessels, without distinction, must exhibit a bright white light at least twenty feet above the surface of the water.

Rule 44.—The navigation of every passenger steamer above one hundred tons burden shall be under the control of a first-class pilot, and every such pilot shall be limited in his license to the particular service for which he is adapted. Special pilots may also be licensed for small steamers of all kinds locally employed.

On all waters other than rivers flowing into the Gulf of Mexico, second-class pilots may be allowed to take charge of steamers not exceeding one hundred tons burden, and may be authorized by the license granted to act in charge of a watch as assistant to a first-class pilot on freight and towing steamers of all tonnage.

All passenger and ferry steamers shall, in addition to the regular pilot on watch, have one of the crew also on watch in or near the pilot-house; and this rule applies to all steamers navigating in the night-time.

The enrollment of the Charlotte Vanderbilt was issued at the port of Albany, September 25, 1880, in conformity to title L, regulations of vessels in domestic commerce, of the Revised Statutes of the United States, and certifies, among other things, that she
286 was built in 1857, is 207 feet long, and that she measures 585.74 tons.

The license was issued at the port of Albany, October 3, 1881, under said title L, to be employed in the coasting trade for one year from the date thereof, and no longer.

The certificate of inspection certifies, among other things, that she was inspected in the district of Albany, N. Y., on the 20th of July, 1881, and that the "said vessel is permitted to navigate for one year the waters of the Hudson river between Albany and New York and touching at intermediate ports, a distance of about 150 miles and return, or any inland route."

Among the particulars of inspection are enumerated:

"Watchman, 1.

"Has signal lights. Yes."

Which said enrollment, license, and inspection of the Charlotte Vanderbilt are in due form, as required by law.

Either party shall be at liberty, upon appeal in any court, to refer

to those portions of the United States Revised Statutes mentioned on page 100, and to the maps marked "C" and "D," mentioned on page 102 of this appeal book.

And the foregoing case, which contains all the evidence *that* which, together with map A hereinafter contained, is material to the questions upon appeal, was thereafter duly settled.

(Here follows map marked page 286*a*.)

286½ Supreme Court.

EMORY A. CHASE and Ano., as Ex. of William Donahue, Deceased,
against
WILLIAM BELDEN.

The foregoing case and exceptions having been signed and settled by me as above this day—

Ordered that said case and exceptions as settled and signed be filed in the office of the clerk of the county of Ulster and be by him annexed to the judgment-roll in this action.

Dated January 31, 1888.

SAMUEL EDWARDS,
Justice Supreme Court.

We hereby consent to the filing and settling of the within as the case upon appeal herein.

WHEELER & CORTIS,
Attorneys for Appellant.
HALLOCK, JENNINGS & CHASE,
Attorneys for Respondents.

287 At a general term of the supreme court of the State of New York held in and for the third judicial department of said State, at the city hall, in the city of Albany, on the seventeenth day of May, 1888.

Present: Hon. William L. Learned, presiding justice; Hon. Judson S. Landon, Hon. Charles R. Ingalls, associate justices.

Supreme Court.

EMORY A. CHASE and WILLIAM J. HUGHES, as Executors of the Last Will and Testament of William Donahue, Deceased,
against
WILLIAM BELDEN.

The appeal from the judgment entered in this action on the twentieth day of June, 1887, in the office of the clerk of the county of Ulster, N. Y., and from the order denying the motion for a new trial having been brought on for a hearing at the above general term of this court, now, after hearing Everett P. Wheeler, Esq., counsel for appellant, William Belden, and Peter Cantine, counsel

for the plaintiffs and respondents, and due deliberation thereupon had, it is—

Ordered and adjudged that the judgment in this action entered in Ulster county clerk's office June 20th, 1887, and the order denying a motion for a new trial, entered herein on the seventeenth day of June, 1887, be, and the same hereby are, in all
288 things affirmed, with costs and disbursements of the appeal from the said judgment, to be taxed.

ROBERT H. MOORE, *Clerk.*

Copy.

ROBERT H. MOORE, *Clerk.*

Filed June 6th, 1888, at 10 a. m.

Supreme Court, Green County.

EMORY A. CHASE and WILLIAM J. HUGHES, as Executors of the Last Will and Testament of William Donahue, Deceased, Plaintiffs and Respondents,

against

WILLIAM BELDEN, Defendant and Appellant.

Judgment June 6th, 1888, at 10 hrs. a. m.

HALLOCK, JENNINGS & CHASE,
Plaintiffs' Attorneys.

This cause having been brought on to argument at the general term of this court upon the appeal brought therein from the judgment entered in Ulster county June 20th, 1887, upon the verdict of the jury therein, and upon the appeal from the order of the special term herein made on the 17th day of June, 1887, and the
289 decision of the general term of this court therein having been duly made affirming the judgment appealed from, with costs and disbursements, to be taxed, and also affirming said order—

Now, on motion of Hallock, Jennings & Chase, attorneys for said respondent, it is—

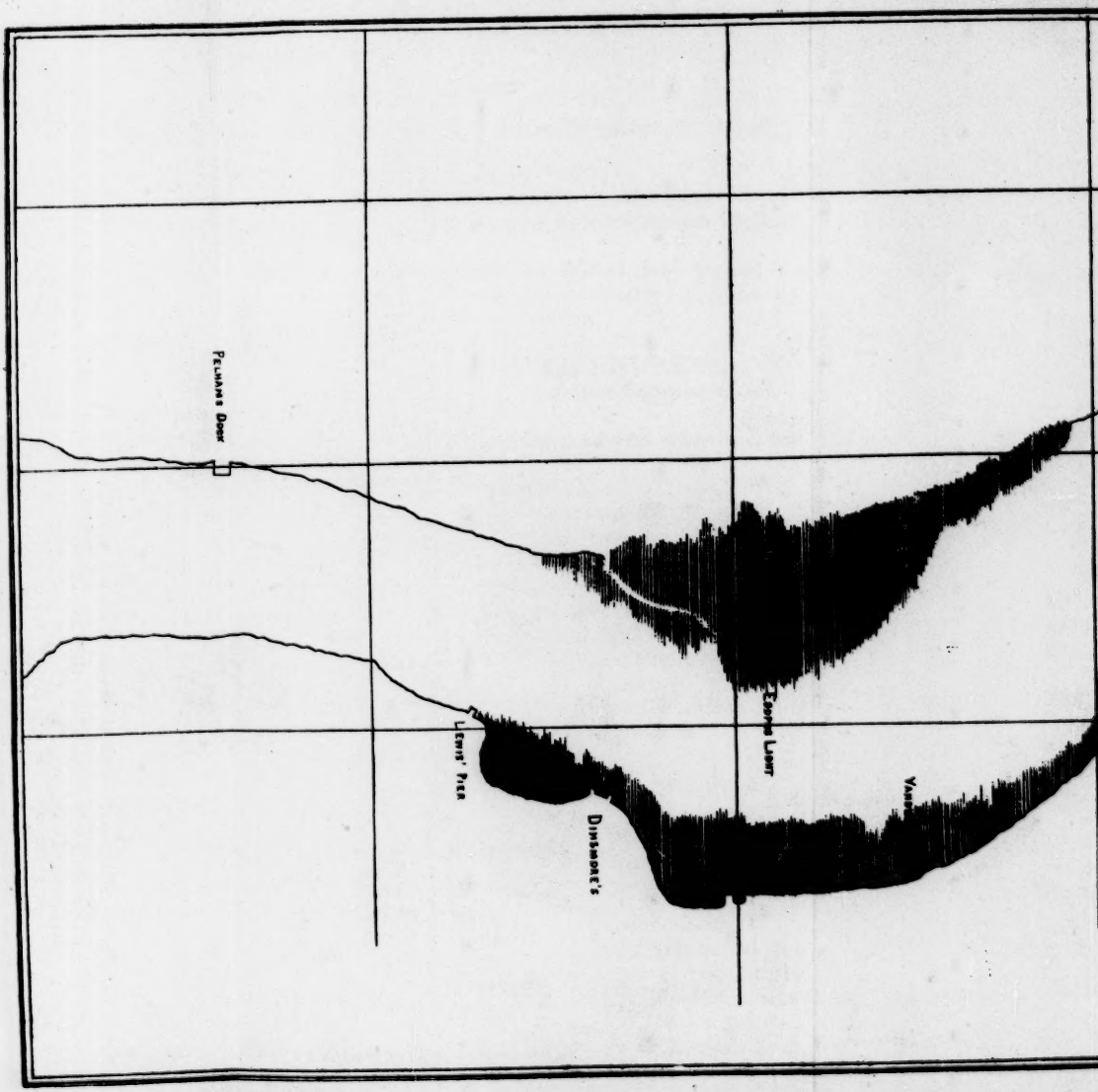
Ordered and adjudged that the said judgment be, and the same hereby is, in all things affirmed; and it is also—

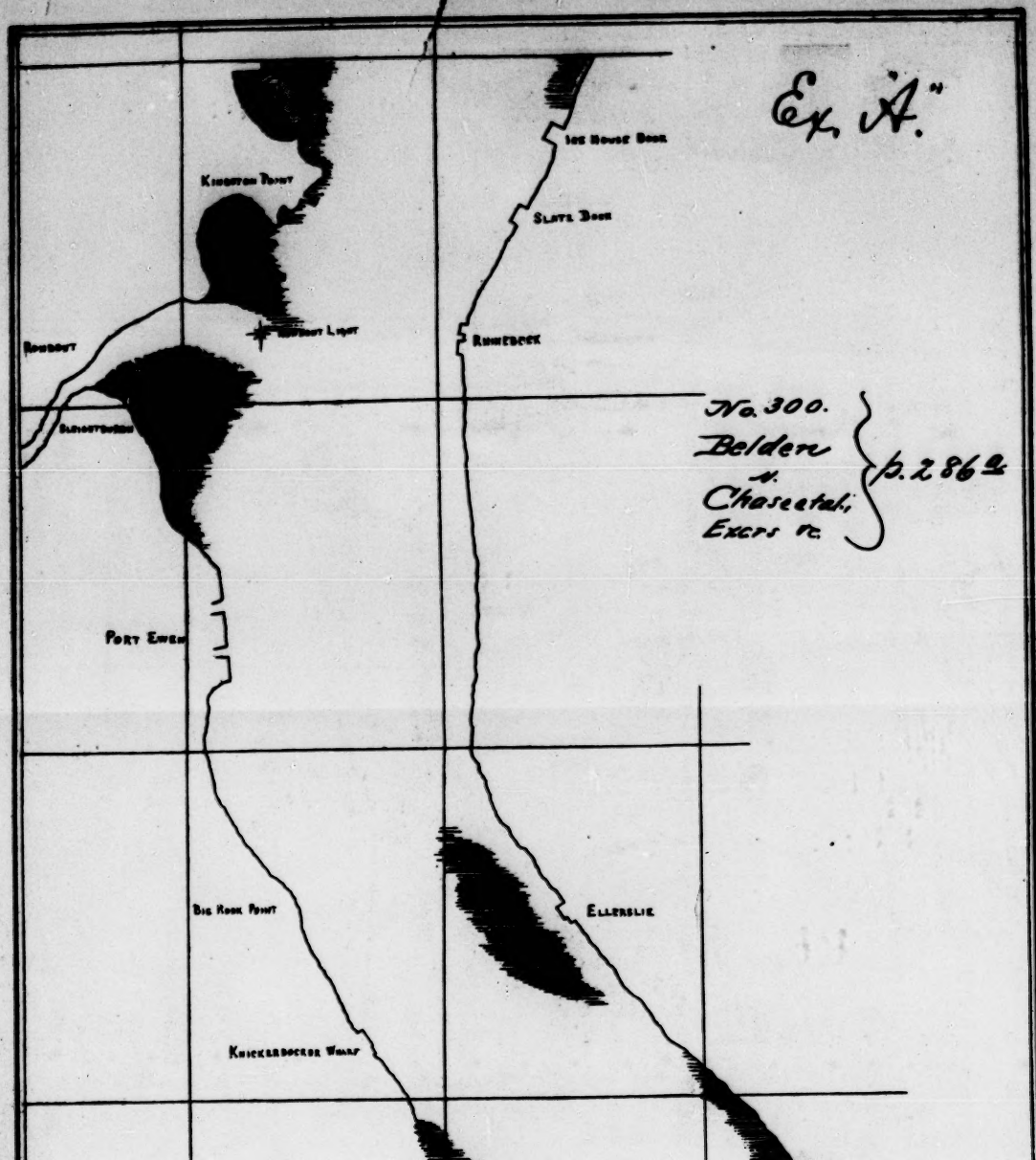
Ordered and adjudged that the said order be, and the same hereby is, in all things affirmed; and it is further—

Ordered that the said respondents, Emory A. Chase and William J. Hughes, as executors of the last will and testament of William Donahue, deceased, recover of the said appellant, William Belden, the sum of one hundred and five dollars and nineteen cents, being the costs and disbursements of the respondents on this appeal, and that execution issue therefor.

ISRAEL SNYDER, *Dep. Clerk.*

Filed June 6, 1888, 10 a. m.


Pelhams Door
Execution Light
Lewis' Pier
Dimmock's


Ex. A"
Ice House Book
Kingston Point
Slate Book
Rondout
Rondout Light
Rhinebeck
Port Ewen
Big Rock Point
Ellerslie
Knickerbocker Wharf
No. 300.
Belden
v.
Chaseetah,
Execs &c.
p. 286

290 Supreme Court, General Term, Ulster County.

EMORY A. CHASE and WILLIAM J. HUGHES, as Executors of the Last Will and Testament of William Donahue, Deceased, Pl'ffs & Resp'ts,
against
WILLIAM BELDEN, Def't & App'l't.

SIRS: Please to take notice that the defendant in the above-entitled action hereby appeals to the court of appeals from the judgment entered therein in the office of the clerk of the county of Ulster on June 6, 1888, and from each and every part thereof, which judgment affirmed both the judgment entered therein — said office upon the verdict of the jury on or about June 20, 1887, and the order denying a motion for a new trial entered therein in said office on or about June 17, 1887.

Dated New York, July 5, 1888.

Yours, &c., WHEELER, CORTIS & GODKIN,
Attorneys for Defendant and Appellant,
45 *William St., New York City.*

To Hallock, Jennings & Chase, attorneys for the plaintiffs and respondents, and Jacob D. Wurts, clerk of Ulster county.

Filed July 6, 1888.

291 Albany General Term, February, 1888. Learned, P. J.; Landon & Ingalls, JJ.

Supreme Court.

EMORY A. CHASE and WILLIAM J. HUGHES, Executors, &c., of William Donahue, Deceased, Respondents,
against
WILLIAM BELDEN, Appellant.

Appeal by the defendant from a judgment entered after a trial at the circuit in favor of the plaintiff-.

Everett P. Wheeler, for appellant.
Peter Cantine, for respondent-.

INGALLS, *J.:*

A reversal of the judgment is asked by the appellant upon the ground that the parties who are in charge of the Vanderbilt at the time of the collision were guilty of negligence, which contributed to the injury of which the plaintiffs complain. Notwithstanding the able argument of the defendant's counsel in support of the case of the appellant, we are convinced by the facts that a fair question of fact was presented for the determination of the jury upon that subject, and that the defendant has failed to show a preponderance of evidence in his favor which calls for a reversal of the judgment

upon that ground. Cheney *vs.* The N. Y. C. & H. R. R. Co.,
292 16 Hun., 415. The evidence bearing upon that question was conflicting, and its determination by the jury involved an investigation in regard to the conduct of the parties who were in charge of the vessels respectively, not only at the precise period when the collision occurred, but also as the vessels approached each other. The casualty was upon a dark night. The Yosemite was proceeding northward at the rate of sixteen miles an hour, and the Vanderbilt southward at the speed of nine miles an hour. The Yosemite displayed signal lights, which were unusual and not authorized in navigating the Hudson river in the night-time, and thereby violated the laws of navigation. It is claimed upon the trial and now here insisted upon by the plaintiffs that the display of such lights by the defendant had the effect to mislead and bewilder the parties in charge of the Vanderbilt to such a degree that they were unable to determine until the vessels had approached each other within dangerous proximity from what source the lights proceeded; whether from a vessel or tow in motion upon the river or from a dwelling upon the land. Jeremiah Whitaker, a witness produced by the plaintiffs and who was the pilot upon the Vanderbilt where the collision occurred, and whose evidence is greatly relied upon by the plaintiffs, testified as follows: "The first lights that I observed in going down the river after we passed Rhinebeck was a red light on a sail-vessel beating up. After that I observed a light which proved to be on the yacht Yosemite. I first observed it when I was down between the two ice-houses. I saw three bright lights—white ones; I thought they were on a tow—two low lights and one high one. I suppose the two lights were on the canal-boat on a tow. Q. Where did they appear to be—those two white lights? A. I took them to be on a tow-hawser tier of a tow going down south. I took the high light to be a steamboat's after-stern light. A steamboat towing other vessels has her
293 stern lights arranged one right under the other on the flagstaff on the rear end of the boat; they show all around; they are usually placed from a foot and a half to two feet apart. I couldn't tell exactly how far off these three lights were; they were pretty well down to the Esopus light. I could not tell whether they were above or right opposite the light because they were to the eastward. Q. How far did these lights appear to be away from you at that time? A. Probably they looked to be a mile. Two vertical lights on the stern, white lights, one above the other, appear at that distance like one light. From my observation I took that high light that I saw to be the two lights of a tow-boat blended in one; when the lights got out range I looked through opera glasses. At night you can see better with such glasses than you can with the natural eyes. Q. When the lights got out range what was your judgment of what these lights were on? A. I took them, one to be ashore, the other on the yacht that lay off there to anchor. Q. You mean by those two lights you took it to be the two low lights? A. Yes, sir. Q. What did it appear to you then that this high light was? A. I could not tell what it was; when they got

out range I took the night glasses; I looked at the light and all around to see if I could see anything. I could see nothing. I did not see any colored lights, either red or green, in the vicinity of this high light; this high light appeared to be to the westward of us. I could tell from the pilot-house she was off on the starboard; she was starboard of our flag-staff; that light did not appear to me at any time from the time I first observed it to be east of us. Q. To go down around the Esopus light, if what you had first taken, if the lights had been what you first took them to be, a tow going down the river, what would have been the first course to take to have passed the tow? A. To the eastward of them. When I made up my mind that it was the tow I saw, I headed my boat more
294 to the eastward; from that point I always kept my course to the eastward; it was a dark night, heavy clouds, and the wind was blowing very hard from the northeast; we did not have any rain on the way down. Q. On such a night as that was, if there had been a green light on the starboard side of what proved to be the yacht, after you took your glasses up and looked to where you saw this light was, if it had been a good bright green high light, would you have been able to have seen it? A. Yes, sir. Q. I will assume a state of facts. If the yacht had been headed up the river and on a course which would have taken her west of your steamboat, would you have been able to have seen a green light if she had had one on board? A. Yes, sir. Q. Now, assuming that she was headed up the river and on a course which was west of the line of your steamboat, if she had had a good bright green light ought not it to have been plainly visible to the naked eye the distance you were apart? A. Yes, sir. I did not at any time before the collision see a green light upon the yacht; before the collision I saw a dim red light on the yacht. I heard one whistle from what proved to be this yacht. I answered them with one. I afterwards gave them two; it was not over three or four seconds between the time I answered his first whistle and the time I gave the two whistles; after I gave the two whistles I heard two whistles from the yacht; they were given just as quick as they could be given; there were no other whistles given than I have named from either my boat or the yacht; first the yacht blew one and I blew one right after; then I blew two and the yacht blew two. I can't say for certain whether it was just before he blew the two whistles or right after he blew his two whistles that I saw the red light; it was one or the other. Q. (COURT:) What is the significance of one whistle? A. To go to the right. Q. (COURT:) For each to go to the right? A. Yes, sir. Q. What was the significance of two whistles?
295 A. Each to go to the left. Q. You say you saw this dim red light. You can't say with certainty whether it was just before or just after; could you indicate by anything to indicate the time? A. No, sir; I could not. When I first got a glimpse of that red light I did not see any other lights anywhere alongside that boat, only the white high light. I did not see the "bull's-eye" lights. I saw them just before she struck us. After the yacht blowed his first whistle I answered him right away with one, and

then after that there was nothing done; I did not alter the wheel or anything of the kind. I gave him two whistles; the boat was right on our course, and he answered me with two; I hove my wheel hard-starboard and sheered my boat hard-a-port. I kept the boat going to the port—kept her wheel hard-a-starboard until I saw there was going to be a collision; I then rung four bells to slow, stop, and back. I had a bell-pull going down in the engine-room. I worked pretty quick; there was no time to be lost there. Immediately after I gave him the four bells the engineer stopped and reversed the engine. The wheel had made from three to four turns backward from the time I gave the bells until the collision took place. I think six or seven turns would have stopped it; I don't think it would have stopped her, but it would have stopped her headway. The three or four turns had materially stopped the headway of my boat. After the yacht had given the two whistles it looked to me as if her pilot hove his wheel the wrong way and went to the eastward, the same way I did. After the two whistles were given the yacht headed to the eastward. After I hove my wheel over, the yacht came to the eastward faster than before—followed us right up. The bull's-eye lights showed to me from the yacht after she appeared to be sheering more to the eastward. The yacht struck us right on our starboard bow; she went right through us; came out on the port side. I think the point where she struck us
296 was nearer to the bow than when she came through. Up to that time I could not say that the yacht had slackened her speed. She appeared to be running very fast; I think she was making from fifteen to sixteen miles an hour with the flood tide; probably more; I could not tell exactly; I know she was running very fast. My boat went down after she ran through and cut the end off. The bow of the boat was cut entirely loose so it floated off. She went down head first, what was left of her. When I heard the first whistle the yacht appeared to be about five hundred yards distant; might have been less. From the time the yacht gave the two whistles I don't think we made three times our length before she struck us. (COURT:) About how far do — think? A. I could not tell, hardly. Q. You are satisfied that your boat had not run three times her length? A. Yes, sir; my boat was a little over two hundred feet long; she struck us while we were backing. Q. Your engineer did not stop backing at all until you hailed him? A. No, sir; when the four bells were rung I could not tell how far apart we were; I knew they were not a great ways apart; how far I could not get; it may have been two hundred or one hundred feet; I can't tell anything about it. Q. When was it that you first observed that the yacht appeared to be heading to the east of you, so that she had run across your bow? A. I could not tell that; I could not answer that, hardly. Q. In reference to the time that you heard these whistles—the two whistles—was it before or after the two whistles were given that she appeared to be headed across your bow? A. After I gave her the two whistles. Q. (The COURT:) When the one whistle was given how did she appear headed? A. I could not get much range only by the high light; I could not tell. Q. But

when you saw that high light, when the one whistle was given, over which bow did you see the high light? A. Over the starboard
297 bow. Q. (COURT:) That is westerly of the channel? A. Yes, sir. Q. What reason did you have for changing from one whistle to two whistles? A. Because it was not safe for me to go across her bow to the westward of her. Q. (COURT:) Where was she when you gave the one whistle? A. She was to the westward of me. Q. Then you gave her two whistles because it was not safe to go — the west? A. Yes, sir; at the time the one whistle was given I could not have thrown my boat to the westward and passed her without collision on the west side. That was the reason I gave the two so quick. When I gave the two whistles and he had answered them with two whistles, if he had ported his helm he would have cleared us. He could have passed us with safety on the west side without a collision. Q. In running down the river that night from Rhinebeck to the time of the collision did you run or keep in about the same part of the channel of the river that steamboats usually run in going down the river? A. Yes, sir. Q. In coming up the river, after you round the point—after you round Esopus light—on what land or point do you head? Q. (Showing Ex. A.) Look at this map and tell us—here is a steamboat coming up; they come around Esopus light? A. Yes, sir. Q. In running up the river where do they head first? A. I know where I head for. I head to the west of the Kingston light; that brings me off outside Port Ewen dock, west of the Swaney plat. After I get past that I head over towards Rhinebeck, going right on up the centre of the channel. In running up the river turning Esopus light, no steamboat can run on one course so as to get past Rhinebeck and steer clear of the Swaney plat.

This witness was cross-examined by the counsel for the defendant, not only in regard to his testimony upon that trial, but also in regard to his evidence upon a previous trial, with the view obviously to show that his statements had been inconsistent and contra-
298 dictory. The jury witnessed the entire proceeding, and we must assume that they attached to the evidence of this witness the weight to which it was justly entitled when compared with the other evidence in the case. The witness was further examined and stated: "My recollection is more clear that it was about the time of the two whistles being given, and not before the first whistle, that I saw the red light." The plaintiffs supported their case upon the trial by other witnesses who were present when the casualty occurred and their evidence mainly coincided with that of Whitaker. The plaintiffs' theory and the evidence by which it was sought to be sustained were assailed by the defendant upon the trial and evidence was produced by the defendant which created a sharp conflict in regard to the main features of the case, and particularly with reference to the question of the contributory negligence. It appears by the plaintiffs' showing that when the pilot of the Vanderbilt first discovered the light, which was subsequently ascertained to proceed from the Yosemite, the two vessels were about a mile apart and approaching each other at the combined speed of at least twenty-five

miles to the hour. It appears that the pilot, Whitaker, immediately commenced to investigate the lights with a view to ascertain from what they proceeded, and according to his evidence it appears that the lights displayed by the Yosemite were unknown to him and changed so rapidly in their appearance as the vessels neared each other as to baffle his inquiry until they had approached within dangerous proximity, when he discovered the defendant's vessel. When the vessels were about five hundred yards apart one whistle was blown from the Yosemite, which indicated an election by those in charge of that vessel to pass to the right of the Vanderbilt, which was answered by one whistle from the last-named vessel, which indicated an assent. Immediately thereafter two whistles were given from the Vanderbilt, which in-
299 dicated that those in charge of that vessel desired to pass to the left of the Yosemite, and these were replied to from the Yosemite by two whistles which manifested their assent. It is quite apparent that at this juncture little opportunity was afforded the parties in charge of the respective vessels to calculate, plan, or execute with any degree of deliberation. The collision occurred a few moments after the two whistles were given from the Yosemite. The witnesses on the part of the plaintiffs gave their version of the transaction and explained their conduct in the management of the Vanderbilt. The witnesses in support of the defendant's theory testified to a state of facts which were in direct conflict with the testimony of the plaintiffs' witnesses upon matters which were material. A careful consideration of the facts has led us to the conclusion that the case was one proper for the consideration of the jury, and that their determination should not be disturbed. The counsel for the defendant practically ignores the consideration pressed by plaintiffs' counsel that the display of the erroneous signal lights by those in charge of the Yosemite had the effect to bewilder and mislead those in charge of the Vanderbilt, and thereby influence their conduct in the management of that vessel. We deem that it is a pertinent and important element as bearing upon the question of contributory negligence. The defendant committed a grave error, at least, in navigating his vessel in the night-time upon the Hudson river with such lights; and, under the peculiar circumstances of this case, it became, we think, an important inquiry by the jury as to how far that error of the defendant may have reasonably influenced the conduct of those in charge of the Vanderbilt in the management of that vessel as bearing upon the question of contributory negligence. In actions of this nature that question is regarded by the courts as one peculiarly within the province of the jury to determine in the light of all the facts and circum-
300 stances of the particular case, and their decision will not be disturbed unless the most satisfactory reason therefore is established by the party complaining thereof. Pomfrey *vs.* The Village of Saratoga Springs, 104 N. Y., 459; Cahill *vs.* Hilton, 106 N. Y., 552; Probst *vs.* Delamater, 100 N. Y., 267, 271; Shook *vs.* The City of Cohoes, 28 N. Y., Week. Dig., 122; Patten *vs.* Pancourt, 14 N. Y. S. Rep., 75. Decided by the court of appeals. The judgment must be affirmed with costs.

301 & 302 Court of Appeals.

EMORY A. CHASE *et al.*, Appellants,
vs.
WILLIAM BELDEN, Respondent.

JAN'Y 18, 1887.

ANDREWS, *J.:*

The plaintiffs were nonsuited on the ground that the "Yosemite," at the time of the collission, carried the proper lights, and no other negligence was imputable to her. This ruling was affirmed by the general term.

The right of the defendant to maintain this judgment must, we think, turn upon the correctness of the ruling that the "Yosemite" was free from negligence. The counsel for the defendant, while strenuously maintaining that the "Yosemite" had the proper lights, also insists that if the court below erred in this respect, nevertheless the nonsuit should be affirmed on the ground that the collission did not result from this omission of duty, but was solely attributable to the mismanagement of the "Vanderbilt." The question whether there was any negligence on the part of the Vanderbilt which would bar a recovery was not considered or decided on the trial. The nonsuit was put exclusively upon the absence of negligence on the part of the "Yosemite," and was affirmed on that ground by the general term. If the ruling on the question of lights was erroneous, the case should, we think, be sent back for a new trial, on which the question as to the negligence of the "Vanderbilt" can be presented and considered.

303 The question whether the "Yosemite," at the time of the collission, carried the proper lights depends upon the construction of the rules for preventing collissions on water prescribed in tit. 48, chap. 5, of the Revised Statutes of the United States, as applied to the "Yosemite" while navigating the Hudson river. The rules prescribing the lights to be carried by steam-vessels divide such vessels into three classes: First, "ocean-going steamers and steamers carrying sail," embraced in rule three; second, "river steamers navigating waters flowing into the Gulf of Mexico and their tributaries," embraced in rule six; and, third, "all coasting steam-vessels and steam-vessels other than ferry-boats and vessels otherwise expressly provided for, navigating the bays, lakes, rivers, or other inland waters of the United States, except those mentioned in rule six," embraced in rule seven. In addition, rule four prescribes the lights to be carried by steam-vessels when towing other vessels, which appears to be of general application. The "Yosemite" at the time of the collission had a green light on her starboard side, a red light on her port side, and at the foremost-head a white light, being the lights prescribed for "ocean-going steamers and steamers carrying sail." It is insisted on the part of the defendant that the "Yosemite" was an "ocean-going steamer and a steamer carrying sail," and was bound to carry the lights prescribed in rule three, whether navigating the ocean or inland waters. The counsel for the plain-

tiffs denies that the "Yosemite" was at the time of the collission "an ocean-going steamer and a steamer carrying sail" within the meaning of rule three, and insists that the words "ocean-going steamer and a steamer carrying sail" are descriptive only of steamers while traversing the ocean and when on high seas, and that
304 every steamer, except those mentioned in rule six, while navigating inland waters, is bound to carry a "central range of two white lights," as prescribed in rule seven, whatever may be its general character as an ocean or inland vessel. We deem it unnecessary to decide this general question.

The "Yosemite" was, we think, in legal character and by proper nomenclature a "coasting steam-vessel," and was therefore, within the express terms of rule seven, bound to carry the central range lights described in that rule. Even if this may not be absolutely true of the "Yosemite" in all situations, it was nevertheless true of her when navigating inland waters. If the "Yosemite" was a coasting vessel it becomes quite unimportant to determine the true construction of the limiting clauses in rule seven. The rule in express words applies to "all coasting steam-vessels," and, plainly, no vessels of that character are by the subsequent language excepted from the obligation to carry the central range lights. The legal character of a vessel is to be determined by reference to the statute and the ship's papers. The "Yosemite" was a yacht "used and employed exclusively as a pleasure yacht and designed as a model of naval architecture," and is so described in her license. By section two, chapter 141, of the United States Statutes of 1848 the Secretary of the Treasury was authorized to cause yachts "used and employed exclusively as pleasure vessels and designed as models of naval architecture," if entitled to be enrolled as American vessels, to be licensed "to proceed from port to port of the United States without entering or clearing at the custom-house." This statute was amended by section two, chapter 170, of the United — Statute- of 1870 by inserting after the words "United States" the words "and by sea to foreign port-," and the original statute, as amended
305 by the act of 1870, now stands as section 4214 of the Revised Statutes. It will be observed that under the statute of 1848 yachts licensed thereunder were exclusively coasting vessels. By the amendment they might have a double character, viz., that of coasting vessels and vessels entitled to go upon the seas to foreign ports. The "Yosemite" at the time of the collision was enrolled at the port of New York, and her certificate of enrollment recites that it was given in conformity to title 50 of the United States Revised Statutes, entitled "Regulations of vessels in domestic commerce." She was also licensed, and her license recites that it was granted in pursuance of chapter two, title 48, entitled "Regulations of commerce and navigation." By reference to title 50 of the United States Revised Statutes, under which the "Yosemite" was enrolled, it will be found that it relates exclusively to coasting and fishing vessels. The title next preceding, viz., title 49, is entitled "Regulations of vessels in foreign commerce." It thus appears that the "Yosemite" was enrolled under the statute relating to coasting

vessels, and her license was a coasting license, with the added privilege of going by sea to foreign ports. It does not seem to admit of reasonable doubt, having reference to the statute and to the enrollment and license, that the "Yosemite" while navigating the Hudson river was navigating under her license in the character of a coasting vessel. This brought her within the operation of rule seven, and she was therefore in fault in not carrying the lights described by that rule. If the collision had happened on the high seas another question would be presented. In the case of the "Glaucus," which came before Lowell, J., in the United States district court, Massachusetts, referred to in a note in Parsons on Shipping
306 and Admiralty (vol. 1, p. 562), which arose under the act of 1866 (U. S. Stats. at Large, vol. 14, chap. 234, section 11), of which section 4233 of the Revised Statutes is, in substance, a reenactment, it appeared that the "Glaucus," a steamer bound from New York to Boston, came into collision with a sailing vessel on Long Island sound. The steamer had in addition to her two side lights two white lights, one at her bow and one at her mast-head. It was contended that she should have had only one white light. Lowell, J., speaking of the act of 1866, said: "Its language does not seem to be very happily chosen. It puts ocean steamers and steamers carrying sail in one class, with one sort of light, and coasting steamers in another, with a different sort, whereas most of the coasting steamers on the Atlantic coast are both ocean-going and carrying sail, so that it may sometimes be difficult for the persons concerned to know to which order they belong." (See the "Continental," 14 Wall., 345.) It is decisive there that the "Yosemite" at the time of the collision was navigating inland waters under a coasting license, and that by the explicit language of rule seven she was bound to carry the central range lights.

The judgment should be reversed and a new trial granted.

307 No prevailing opinion written. See minute at close of this opinion.

EMORY A. CHASE *et al.*, Executors, &c., Respondents,
vs.
WILLIAM BELDEN, Appellant.

Everett P. Wheeler, for appellant.
Peter Cantine, for respondent.

NOV. 26TH, 1889.

GRAY, *J.* (dissenting):

I think that upon the case as made the court should have dismissed the complaint. It is true that there was proof of the negligence of the defendant. When this case was here before (104 N. Y., 86) it was held that the defendant's yacht was a coasting steam-vessel and bound as such to carry what are known as central range lights. Her failure to do so was an act of omission which charges her owner with a liability as for negligence, but it was not enough that

she should be proved to have been in fault. It was incumbent upon the plaintiffs to establish their own freedom from charges of negligent acts, and if the proof upon which they rested their right to recover disclosed any act clearly contributing to the result they should have been nonsuited. The question of concurrent negligence is generally one for the jury to pass upon, but where facts are undisputed the question of the plaintiff's contributory negligence may become a question of law for the court.

Now, in this case the contributory negligence of the plain-
308 tiffs, I think, was shown by the evidence of their own witnesses. This collision occurred on the Hudson river, below Rhinebeck. Plaintiffs' steamboat, the Vanderbilt, was steaming down the river at the rate of about nine miles an hour. Her pilot, Whitaker, says it was a dark, cloudy night and blowing hard. Ahead of him, down the river, he saw three bright, white lights—two low ones and one high one—which he thought were on a tow, going south and about a mile distant. When the lights got out of range he used his opera glasses, but he could not make out what the high light was. He saw no colored lights near the high light and the object was off to the westward or right of him. He made up his mind that it was a tow and he laid his course to pass it to the left or eastward. He next heard one whistle given by the distant vessel, which signified to him that it was an approaching steamer and for each to go to the right. To this course he assented by one answering blast of the whistle. This vessel was the defendant's steam-yacht "Yosemite," and at that time he thought the vessels were five hundred yards or fifteen hundred feet apart. A few seconds after answering the yacht's whistle the Vanderbilt's pilot blew two whistles, signifying that each should go to the left, and they were quickly answered by two whistles from the yacht. The Vanderbilt's pilot when he heard them hove his wheel hard-a-starboard and sheered his boat hard-a-port or to the left. The collision occurred
almost immediately, or, as he said, "from the time the yacht
309 gave the two whistles I don't think we made three times our length before she struck us." He says he saw the yacht's red light about the time he heard her returning his two whistles. That light, being carried on the vessel's port side, disclosed to him the positions of the vessels towards each other. When he saw a collision to be imminent he rang four bells to slow, stop, and back. They were then, he thought, not a great ways apart. "It may have been two hundred or one hundred feet." He assigned as his reason for giving two whistles, after having replied with one whistle to the yacht's one whistle, that he thought he could not have thrown his boat to the westward and passed on the yacht's west side without colliding. The yacht struck the Vanderbilt forward of her starboard or right-hand gangway and cut clean through her bow to about the middle of the port or left-hand gangway.

It is quite evident that the vessels were approaching each other in an oblique direction, for, according to plaintiffs' evidence, the Vanderbilt, when her pilot thought he saw a tow ahead of him going south, ported his vessel to pass to the eastward or left of it,

and he kept on going to the eastward. The yacht laid her course to go to the east or right of the Vanderbilt and so signified by her whistle, and as evidence of that course the pilot of the Vanderbilt says he saw her red light at the time of the two whistles. It seems clear enough to me that the Vanderbilt's pilot violated the
310 established rules for navigation in such cases, and because of that violation the vessel in his charge must be deemed, as matter of law, to have contributed to the occurrence complained of. According to his statement, he was ignorant of what the distant light was, and he knew nothing of the other vessel's course, but, supposing it was a tow, he laid his course somewhat to the eastward to pass by. Then he heard the signal from her of one whistle to go to the right of each other, and, knowing of the approach of a steamer on his course, he at first agreed to her pilot's signal by giving the appropriate reply, but in a few seconds he gave the signal by two whistles for each to go to the left of the other, and receiving an assent to that at once hard-ported his vessel, sheering her more sharply to the eastward. He says he could not at first see the yacht's colored lights, and therefore and in the absence of her central range lights could not tell her course, but he did have the one whistle to guide him in the first place and he did see her red or port light when the two whistles were given, and thus knew her port or left side was towards him and that she was approaching him obliquely. Now, what his duty was under the circumstances is made clear by reference to the rules and regulations for the government of pilots navigating rivers, etc., which were adopted by the board of supervising inspectors as authorized by the act of Congress "to provide for the better security of life on board of vessels propelled in whole or a part by steam and for other purposes," approved Feb-
311 ruary 26, 1871, and the acts amendatory thereof. Those rules are controlling in all cases of navigation of steam-vessels, and have the force and effect of statute where they do not conflict with any special rule duly made by local authority relative to inland or river navigation. Their violation should be chargeable as a fault, for obedience to them is not only necessary, but ensures safety.

We understand the defendant's counsel to concede the binding force of these rules. I will cite here two of those rules which are applicable, in my opinion, to the state of facts:

Rule I. When steamers are approaching each other "head and head" or nearly so it shall be the duty of each steamer to pass to the right or port side of the other, and the pilot of either steamer may be first in determining to pursue this course, and thereupon shall give as a signal of his intention one short and distinct blast of his steam whistle, which the pilot of the other steamer shall answer promptly by a similar blast of his steam whistle, and thereupon such steamers shall pass to the right or port side of each other; but if the course of such steamers is so far on the starboard of each other as not to be considered by pilots as meeting "head and head" or nearly so, the pilot so first deciding shall immediately give two short and distinct blasts of his steam whistle, which the pilot of the other

steamer shall answer promptly by two similar blasts of his steam whistle, and they shall pass to the left or on the starboard side of each other.

312 Rule III. If, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam whistle, and if the vessels shall have approached within half a mile of each other both shall be immediately slowed to a speed barely sufficient for steerage-way until the proper signals are given, answered, and understood or until the vessels shall have passed each other.

We must assume that, from the absence of central range lights and the inability to see the colored lights on the Yosemite, the Vanderbilt could not determine what she was or what her course, and equally must we assume that to the Yosemite the Vanderbilt and her course were known by the lights she carried; therefore, when the pilot of the yacht gave one blast of the whistle he did so with all the knowledge possible in such cases and was first in deciding upon the course of passing to the right or the port side of the other. Under rule I, this decision, having been assented to, determined a course for both vessels. In subsequently deciding to take the opposite course—that is, to go to the left or the starboard side of the other—the Vanderbilt's pilot took the risk of his judgment being right or better. He must have known that to the stranger vessel his position and course were indicated by his vessel's light,

313 while he himself was, if he is to be believed, ignorant of the yacht's. Now, was not his duty under the circumstances defined unmistakably by the rules by which he was to be governed? He could do one of two things. He could, and as I think should, have adhered to his agreement with the yacht's master to go to the right of each other; or, under rule III, if he failed to understand the course or intention of the yacht, "whether from signals being given or answered erroneously or from other causes," he could have given several short and rapid blasts of the whistle and slowed down until the proper signals were given or understood or the vessels had passed. Under the state of facts the Vanderbilt's pilot had no right to give the two signals after he had assented to the course indicated by one whistle and when he was as yet in the dark as to any other indication of the yacht's existence or course. It may well be that the yacht should not have answered the two whistles and thus assented to the change in the course; but that cannot affect the Vanderbilt's responsibility for the change. The Vanderbilt in subsequently giving the two blasts of the whistle thereby notified the approaching vessel that she, the Vanderbilt, could keep out of the way by going to the left and would do so if the other would agree to it, and the yacht's assenting blasts simply meant that it agreed to that; the risk to be the Vanderbilt's. If the Vanderbilt's pilot had obeyed the rule of the road as laid down by the statutes of the

State and of the United States and adhered to his agreement
314 with the approaching vessel and had kept to the right, either the collision would not have happened or, if it had happened, the Vanderbilt would not have been in fault.

In the absence of the expected and usual signals, a pilot should not be governed by impressions. If, in the exercise of discretion, he departs from the rules in such cases, in the absence of any necessity, and a collision is enabled to occur, he does so at his peril and at the risk of charging his vessel with a liability. If it is claimed that if the Vanderbilt's pilot committed a mistake it was one *in extremis*, it should appear that his faulty manœuvre was caused by the error of the other vessel. (112 U. S., 514.) But there was no such producing cause in this case, for the Vanderbilt's pilot says he could only make out the one high light before he heard the one whistle and only saw the red light, which indicated her port side was towards him about the time of the two whistles.

The manner in which the yacht cut through the Vanderbilt's bow presents to my mind some evidence that the yacht was attempting to comply with the Vanderbilt's signal to pass to the left. The evidence shows that the yacht's bow struck the Vanderbilt forward of her starboard gangway, cut through, and came out about the middle of her port gangway; the Vanderbilt's course was, at the time, sharp to the eastward. If the yacht had kept on pointing to the eastward, with the object of passing to the right of the
315 Vanderbilt, they would have met on oblique courses and the yacht would have cut through the other vessel on a line which would have taken her to a point forward of the Vanderbilt's port gangway; but it is evident from the fact of the line of the cutting through terminating at a point in the middle of the port gangway that the yacht's pilot had already ported his vessel's bow and attempted to comply with the changed signal.

In the case of the City of Hartford (II Blatchford, C. C. Rep., 72), after that vessel had blown one whistle for each to go to the right, the approaching vessel, the "Unit," blew two for each to go to the left, and the City of Hartford assented to the changed course. Judge Woodruff, in his opinion, agreed with the court below that she ought not to have done so; that she ought to have kept off or stopped. He held that "the manœuvre was fatal. In the most favorable view for the Unit, the approaching vessel, it was an error in which both concurred." He decided that "the conclusion seems inevitable that both were in fault."

It is suggested in the general term opinion that the pilot of the Vanderbilt was bewildered. It may be. It is not disputed that the yacht was in fault; but under the third rule which we have quoted, if the pilot was bewildered and failed to understand the other vessel's course or intention, he should have signified to that effect by the repeated short blasts and have slowed down or stopped. The Vanderbilt's pilot forgot or disregarded the rules, and his
316 mistake must be regarded as having contributed to the occurrence.

I think the judgment and order denying a new trial should be reversed and a new trial ordered; costs to abide the event.

A copy.

H. E. SICKELS, *Reporter*,
Per C.

"Judgment affirmed with costs. No opinion. All concur except Gray, J., who reads for reversal."

A copy.

H. E. SICKELS, *Reporter*,
Per C.

317 [Endorsed:] Chase *vs.* Belden. Opinion (dissenting), Gray, J.

318 UNITED STATES OF AMERICA, *ss:*

To Emory A. Chase and William J. Hughes, as executors of the last will and testament of William Donahue, deceased, Greeting:

You are hereby sought and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of New York, wherein William Belden is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable William C. Ruger, chief judge of the said court of appeals of the State of New York, this 4th day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

WM. C. RUGER,
Chief Judge of the Court of Appeals of the State of New York.

319 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between Emory A. Chase and William J. Hughes, as executors of the last will and testament of William Donahue, deceased, plaintiffs, and William Belden, defendant, wherein a right, privelege, or immunity was claimed under a statute of the United States and the decision was against the right, privelege, or immunity specially set up or claimed under such statute, a manifest error has happened, to the great damage of the said William Belden, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the

parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

320 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 5th day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

W. S. DOOLITTLE,
[L. S.] *Clerk of the Circuit Court of the United States for the Northern District of New York.*

The above writ allowed Dec. 4th, 1889.

WM. C. RUGER,
Chief Judge Court of Appeals, New York.

321 Court of Appeals of the State of New York.

EMORY A. CHASE and WILLIAM J. HUGHES, as Executors of the Last Will and Testament of William Donahue, Deceased, Plaintiffs,
against
WILLIAM BELDEN, Defendant.

To the court of appeals of the State of New York:

The petition of William Belden, of the city, county, and State of New York, defendant in the above-entitled action, respectfully shows to the court—

That a judgment affirming the judgment of the court below in this action was rendered herein by the court of appeals on the twenty-sixth day of November, 1889. In the said action your petitioner is advised and believes that a right, privilege, or immunity was claimed by said petitioner under a statute of the United States and the decision of the said court of appeals was against the right, privilege, or immunity especially set up or claimed under said statute. Your petitioner therefore desires to avail himself of the law and practice in such cases made and provided by a writ of error to the Supreme Court of the United States. Your petitioner therefore prays that the said writ may be allowed by this court.

322 And your petitioner will ever pray, &c.

Dated New York, December 4, 1889.

WILLIAM BELDEN,
By LAWRENCE GODKIN, *Att'y.*

CITY AND COUNTY OF NEW YORK, *ss:*

Lawrence Godkin, being duly sworn, deposes and says that he is one of the firm of Wheeler, Cortis & Godkin, attorneys for the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is made by deponent is that the petitioner, William Belden, is not within the county of New York, and that the sources of deponent's information and the grounds of his belief are derived from his familiarity with this action as one of the attorneys for the petitioner herein.

LAWRENCE GODKIN.

Sworn to before me this 4th day of December, 1889.

GEO. H. BARNES,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

Endorsed: Read on motion, Wm. C. Ruger.

323 [Endorsed:] Supreme Court of the United States. William Belden, pl'ff in error, against Emory A. Chase and another, def'ts in error. Citation, writ of error, and petition. Filed Dec'r 7th, 1889.

324 Supreme Court of the United States.

WILLIAM BELDEN, Plaintiff in Error,
against
EMORY A. CHASE and WILLIAM J. HUGHES, as Executors of the Last Will and Testament of William Donahue, Deceased, Defendants in Error.

Know all men by these presents that William Belden, of the city and State of New York, and the American Surety Company, of said city and State of New York, a corporation organized under the laws of said State, are held and firmly bound unto Emory A. Chase and William J. Hughes as executors of the last will and testament of William Donahue, deceased, of Catskill, New York, in the sum of thirty thousand dollars, to be paid unto the said Emory A. Chase and William J. Hughes as executors or their successor or successors; to which payment, well and truly to be made, said William Belden binds himself, his heirs, executors, administrators, and assigns, and the said American Surety Company binds itself and its successor or successors, jointly and severally, firmly by these presents.

Sealed with the respective seals of said Belden and said company. Dated this 3rd day of December, A. D. 1889.

Whereas the above-named William Belden hath prosecuted a writ of error to the Supreme Court of the United States to reverse

the judgment rendered in the above-entitled action by the court of appeals of the State of New York:

325 Now, therefore, the condition of this obligation is such that if the above-named William Belden shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

In witness whereof the said William Belden has hereunto set his hand and seal and the said American Surety Company has caused these presents to be executed by its president and secretary, thereunto lawfully authorized, and its corporate seal to be affixed by authority of its board of directors this 3rd day of December, 1889.

WILLIAM BELDEN. [L. S.]
AMERICAN SURETY COMPANY
OF NEW YORK,
[L. S.] By W. L. TRENHOLM, *President.*
FRED. F. NUGENT, *Secretary.*

In presence of—
H. G. HINTON.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 3rd day of December, 1889, before me personally appeared William Belden, to me known and known to me to be one of the persons who executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein mentioned.

H. G. HINTON,
[L. S.] *Notary Public, Kings Co., N. Y.*

Cert. filed in N. Y. Co.

326 STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 3rd day of December, 1889, before me personally appeared Wm. L. Trenholm, president of the American Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as president of said company by like authority, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 486, of the Session Laws of 1881; and the said Wm. L. Trenholm further said that he was acquainted with Fred. F. Nugent and knew him to be the secretary of said company; that the signature of said Fred. F. Nugent subscribed to the said instrument is in the genuine handwriting of the said Fred. F. Nugent, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Wm. L. Trenholm, president.

[L. S.] H. G. HINTON,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

327 At a meeting of the board of directors of the American Surety Company held at the office of the company on the 9th day of June, 1886, on motion, it was

"Resolved, That in pursuance of chapter 416, Laws of 1886, amending section eight hundred and eleven of the Code of Civil Procedure, the president or vice-president be, and either of them is hereby, authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of the company and to attach thereto the seal of the company, the same to be attested by the secretary or assistant secretary."

CITY AND COUNTY OF NEW YORK, *ss:*

I, Frederick F. Nugent, secretary of the American Surety Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

[L. S.] Given under my hand and the seal of the company, at the city of New York, this 3rd day of December, 1889.

FRED. F. NUGENT, *Secretary.*

328 STATE OF NEW YORK,
City and County of New York, } *ss:*

Fred. F. Nugent, being duly sworn, deposes and says that he is the secretary and general solicitor of the American Surety Company of New York; that the foregoing is a true and correct statement of the financial condition of said surety company as of June 29th, 1889, to the best knowledge, information, and belief of deponent.

FRED. F. NUGENT.

Sworn to before me this 3rd day of December, 1889.

H. G. HINTON,
[L. S.] *Notary Public, Kings Co., N. Y.*

Cert. filed in N. Y. Co.

Endorsed: Approved. Wm. C. Ruger, chief judge court of appeals, New York. Filed Dec'r 7th, 1889.

329 [Endorsed:] Supreme Court of the United States. William Belden, plaintiff in error, against Emory A. Chase *et al.*, defendants in error. Bond.

330 STATE OF NEW YORK:

Court of Appeals.

CLERK'S OFFICE.

I, Gorham Parks, clerk of the court of appeals of the said State of New York, do hereby certify that the annexed papers are correct copies of the original return and the whole thereof upon which the said court of appeals acted in rendering judgment herein, as well as

of the remittitur and opinions of said court and of the petition, citation, bond, and writ of error to the United States Supreme Court herein.

Seal State of New York Court of Appeals.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this 31st day of December, A. D. 1889.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

331 Supreme Court of the United States, October Term, 1890.

WILLIAM BELDEN, Plaintiff in Error,
against
EMORY A. CHASE and WILLIAM J. HUGHES, Executors, &c., Defendants in Error.

Afterwards, to wit, on the first Monday of October, in this same term, before the justices of the Supreme Court, at the Capitol, in the city of Washington, comes the said William Belden, by Lawrence Godkin, his attorney, and says that in the record and proceedings aforesaid there is manifest error in each and every of the following ruling- and decisions, to wit:

First. The supreme court of the State of New York and the court of appeals of said State in affirming the judgment of the supreme court erred in holding and deciding that the yacht Yosemite, named in the record aforesaid, was not an ocean-going steamer, and that she was in fault and liable in damages for not carrying range lights, whereas it distinctly appears in the said record that said yacht was an ocean-going steamer and did have the lights required by the law of the United States to be carried by said steamers—that is to say, a bright white light at the foremast-head, a green light on the starboard side, and a red light on the port side—and erred in
332 deciding against the right and immunity claimed by the plaintiff in error under the statute of the United States in such case made and provided.

Second. The said supreme court and the said court of appeals erred in holding and deciding that the rules and regulations for the navigation of vessels prescribed by the Revised Statutes of the United States were not binding absolutely upon persons navigating vessels upon the waters of the United States, but were merely prudential requirements which might be disregarded with impunity if, in the opinion of a jury, such compliance was for the time unnecessary or inexpedient.

Third. The said supreme court erred in charging the jury that as matter of law the said Yosemite, upon the occasion of the collision mentioned in the pleadings, was bound to have and display central range lights, and the court of appeals erred in affirming the said ruling of the supreme court.

Fourth. The said supreme court erred in refusing to charge the

jury as requested in the first request, and the court of appeals erred in affirming the said refusal.

Fifth. The said supreme court erred in refusing to charge the jury as requested in the second request, and the court of appeals erred in affirming the said refusal.

Sixth. The said supreme court erred in refusing to charge the jury as requested in the third request, and the court of appeals erred in affirming the said refusal.

333 Seventh. The said supreme court erred in refusing to charge the jury as requested in the fourth request, and the court of appeals erred in affirming the said refusal.

Eighth. The said supreme court erred in refusing to charge the jury as requested in the eighth request, and the court of appeals erred in affirming the said refusal.

Ninth. The said supreme court erred in refusing to charge the jury as requested in the ninth request, and the court of appeals erred in affirming the said refusal.

Tenth. The said supreme court erred in refusing to charge the jury as requested in the tenth request, and the court of appeals erred in affirming the said refusal.

Eleventh. The said supreme court erred in refusing to charge the jury as requested in the eleventh request, and the court of appeals erred in affirming the said refusal.

Twelfth. The said supreme court erred in refusing to charge the jury as requested in the twelfth request, and the court of appeals erred in affirming the said refusal.

Thirteenth. The said supreme court erred in refusing to charge the jury as requested in the thirteenth request, and the court of appeals erred in affirming the said refusal.

Fourteenth. The said supreme court erred in refusing to charge the jury as requested in the fourteenth request, and the court of appeals erred in affirming the said refusal.

334 Fifteenth. The said supreme court erred in refusing to charge the jury as requested in the fifteenth request, and the court of appeals erred in affirming the said refusal.

Sixteenth. The said supreme court erred in refusing to charge the jury as requested in the twenty-third request, and the court of appeals erred in affirming the said refusal.

Seventeenth. The said supreme court erred in refusing to charge the jury as requested in the twenty-fifth request, and the court of appeals erred in affirming the said refusal.

Eighteenth. The said supreme court erred in refusing to charge the jury as requested in the thirty-ninth request, and the court of appeals erred in affirming the said refusal.

Nineteenth. The said supreme court erred in refusing to charge the jury as requested in the fortieth request, and the court of appeals erred in affirming the said refusal.

Twentieth. The said supreme court erred in overruling the objection of the plaintiff in error to the question put to Frederick Bell, "Have you in your experience as a pilot before this night met vessels navigating the Hudson river with this high fore-

masted light?" and the court of appeals erred in affirming the said ruling.

335 Twenty-first. The said supreme court erred in overruling the objection of the plaintiff in error to the following question put to Frederick Bell: "Do you have any lookout beyond what you have in or about the pilot-house?" and the court of appeals erred in affirming the said ruling.

Twenty-second. The said supreme court erred in overruling the objection of the plaintiff in error to the question put to Edward Post, "In running on the river have you seen north of New York, in the night-time, a vessel with such lights on as the Yosemite had?" and the court of appeals erred in affirming the said ruling.

Twenty-third. The said supreme court erred in overruling the objection of the plaintiff in error to the question put to Peter F. Bell, "In your experience in boating on the river have you ever seen such a light as that light was at the top of the foremast?" and the court of appeals erred in affirming the said ruling.

Twenty-fourth. The said supreme court erred in overruling the objection taken by the plaintiff in error to the question put to Henry O. Nichols, "From your experience as a boatman on the Hudson river would a steam-vessel with a mast-head light (white light) and no bow light be a usual or customary light for a steam-vessel to navigate the Hudson river?" and the court of appeals erred in affirming the said ruling.

336 Twenty-fifth. The said supreme court erred in denying the motion of the plaintiff in error to dismiss the complaint on the first, third, and fifth grounds stated in the said record, and the court of appeals erred in affirming the said ruling.

Twenty-sixth. The said supreme court erred in denying the motion to dismiss the complaint made at the close of the testimony stated in said record upon the grounds lastly hereinbefore mentioned, and also for the additional reasons specified in said record, and the court of appeals erred in affirming the said ruling.

Twenty-seventh. The said supreme court erred in striking out the testimony of Seth N. Eldridge in reference to the direction of the supervising inspectors respecting the lights of the Yosemite, and the court of appeals erred in affirming the said ruling.

Twenty-eighth. The said supreme court erred in sustaining the objection of the defendants in error to the question put to Samuel Samuels, "What is understood by nautical men by a coasting vessel?" and the court of appeals erred in sustaining the said ruling.

Twenty-ninth. The said supreme court erred in sustaining the objection of the defendant in error to the question put to Samuel Samuels, "Is or is not a coasting vessel one that is engaged in the coasting trade?" and the court of appeals erred in sustaining the said ruling.

Thirtieth. The said supreme court erred in sustaining the objection of the defendant in error to the question put to Samuel Samuels,

337 "Is not a coasting vessel one that carries freight or passengers for pay between the ports of the United States?" and the court of appeals erred in sustaining the said ruling.

Thirty-first. The said supreme court erred in sustaining the objection of the defendant in error to the question put to Samuel Samuels, "What is understood by nautical men, maringers engaged in navigation, by a yacht?" and the court of appeals erred in affirming the said ruling.

Thirty-second. The said supreme court erred in sustaining the objection of the defendant in error to the question put to Samuel Samuels, "In point of fact, in actual marine practice and use, whether a yacht is a coasting vessel as understood by mariners and nautical men, state the facts in that regard," and the court of appeals erred in affirming said ruling.

Thirty-third. The said supreme court erred in rendering judgment upon the verdict in favor of the defendant in error, and the court of appeals erred in affirming the said judgment.

All of which decisions were against the rights and immunities claimed by the plaintiff in error under the statute of the United States made and provided in reference to the enrol-ment and license of yachts used and employed exclusively as pleasure vessels and designed as models of naval architecture and in reference to preventing collisions on the water, and more particularly under
338 sections 4214 and 4233 of the Revised Statutes of the United States.

And the said William Belden prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he hath lost by occasion of the said judgment.

EVERETT P. WHEELER,
LAWRENCE GODKIN,
Attorneys for Plaintiff in Error.

339 [Endorsed:] U. S. Supreme Court, October term, 1889. No. 1098. William Belden, pl'ff in error, against Emory A. Chase and William J. Hughes, executors, &c., def'ts in error. Assignment of errors.

[Stamped:] Office Supreme Court U. S. Filed Sep. 16, 1890. James H. McKenney, clerk.

Endorsed on cover: Case No. 13,947. New York court of appeals. No. 300. William Belden, plaintiff in error, *vs.* Emory A. Chase & William J. Hughes, as executors of the last will & testament of William Donahue, deceased. Filed January 13, 1890.

Supreme Court of the United States.

WILLIAM BELDEN,

Plaintiff in Error,

against

EMROY A. CHASE AND WILLIAM J. HUGHES, as Executors, &c., of WILLIAM DONAHUE, Deceased,

Defendants in Error.

Brief for Plaintiff in Error.

EVERETT P. WHEELER &
LAWRENCE GODKIN,

Attorneys for Plaintiff in Error.

EVERETT P. WHEELER,

Of Counsel.

Supreme Court of the United States.

WILLIAM BELDEN,
Plaintiff in Error,

vs.

EMORY A. CHASE and another, Executors, &c.,
Defendants in Error.

Brief for Plaintiff in Error.

STATEMENT OF FACTS.

This is a writ of error, sued out by the defendant below, to review a judgment of the Court of Appeals of the State of New York, which affirmed a judgment of the Supreme Court of that State, entered on a verdict in favor of the plaintiffs below, and against the defendant below, for $27,668.26. The action was brought by William Donahue, plaintiffs' testator, against William Belden, for damage done to the steamboat Charlotte Vanderbilt, by a collision with the steam yacht Yosemite, upon the Hudson river, between Rondout and Esopus, July 1, 1882. Yosemite was going up the river and Vanderbilt was going down. A map of

that part of the river faces page 200 of the record.

The action has been three times tried at Circuit. The result of the first trial was a verdict for the plaintiffs. The judgment entered on this verdict was reversed by the General Term. On the second trial, at the close of all the evidence, the complaint was dismissed. The judgment entered accordingly, dismissing the complaint, was affirmed at the General Term, but reversed by the Court of Appeals, and the result of the third trial was that already stated. The case is reported in 104 N. Y., 86; 34 Hun, 571; 16 N. Y. State Rep., 528; and 1 N. Y. Supp., 48.

The opinion on the first appeal is at pp. 208–210 of the record. No prevailing opinion was delivered on the second appeal. Mr. Justice Gray's dissenting opinion is at pp. 210–215. The case involves important questions under the rules for navigation prescribed by the Revised Statutes, upon which the New York Supreme Court differed from the Court of Appeals and is now brought here for final decision.

Plaintiffs alleged that Yosemite was negligent in the following particulars:

1. That she did not have range lights.

2. That her green light on the starboard side, and her red light on the port side, were dim.

3. That when Vanderbilt gave two whistles as a signal of her intention to go to the left, or to the eastward, Yosemite did not also go to the left or to the westward.

1. Yosemite admitted that she did not have range lights. The Court of Appeals held that in this particular she failed to comply with the law.

2. Yosemite denied that her side lights were dim.

3. Yosemite admitted that she did not go to the left when the two whistles of Vanderbilt were heard, and gave the following reasons therefor:

(*a.*) That it was impossible for her to change her course at that moment, in time to avoid a collision.

(*b.*) That Vanderbilt had no right to blow the two whistles and follow up the signal by going to the left, because the vessels had previously exchanged signal whistles, which indicated the intention of each to go to the right.

Yosemite alleged as negligence on the part of Vanderbilt:

1. That when Vanderbilt was in doubt as to Yosemite's course, she did not comply with the rule by giving alarm whistles, and slacking her speed.

2. That when Vanderbilt was below the upper ice-house at Big Rock Point, and both vessels were in a position of relative safety, each showing its red light to the other, and, therefore, being on parallel or diverging courses, Vanderbilt changed her course to the eastward, and headed for Dinsmore's house, thus throwing herself across the path of Yosemite, thereby expressly violating the United States statute.

3. That when the two vessels exchanged signals of a single whistle, each thus indicating her intention of going to the right, Vanderbilt did not comply with the signal thus given, and continued her course to the left.

4. That Vanderbilt, having Yosemite on her

starboard bow, failed to keep out of the latter's way.

5. That even after the failure of Vanderbilt to comply with the single whistle, the steamers would have gone clear, but that Vanderbilt changed her mind, blew two whistles, immediately took a sudden sheer to the left or eastward, and thus produced the collision.

There is a conflict on several points in the testimony, but it is believed that the undisputed facts in the case are sufficient, when properly considered, to show beyond question that Vanderbilt was in fault. The facts which cannot be disputed, are chiefly these :

1. That while Vanderbilt was passing over the part of the river between the upper ice-house at Big Rock Point, and the lower ice-house at Knickerbocker Wharf, she was headed for a point between Esopus Light and the shore, and that Yosemite at the same time was headed for a point west of Rhinebeck Bluff. The courses thus indicated were parallel or diverging, and as long as the two vessels continued on them, no collision could occur.

2. When opposite the lower ice-house, Vanderbilt changed her course to the eastward, and headed for Dinsmore's house. This course intersected that of the Yosemite.

3. About the same time, but whether before or after this change of course is not precisely clear, Yosemite gave the signal of one whistle to Vanderbilt, indicating thereby under the rules her intention to keep to the right, and Vanderbilt answered with one whistle, indicating her acceptance of this signal, and her intention to keep to the right. If

these signals had been obeyed, the two vessels would have passed in safety.

4. After the signals had been thus exchanged, Vanderbilt changed her mind, blew two whistles, indicating her intention to go to the left, and followed up this signal by such a change of her helm as brought her head rapidly to the eastward, until she was in a position almost directly across the stream. In this position she was struck by the Yosemite at her forward gangway, and on a line almost at right angles to her course, with such force as to cut off her bow and sink her immediately.

The defendant's evidence is to the effect that Yosemite's lights were even more powerful than the law required, and were well trimmed and brightly burning (Hinckley, pp. 124, 125; Moon, p. 72; Belden, p. 150), that when the red light of Vanderbilt was descried, Yosemite gave one whistle, which was promptly replied to with one whistle; that thereupon, Yosemite kept off a little to the eastward, and that the two vessels would have gone clear, at a safe distance, but for the sudden sheer of Vanderbilt across the yacht's bows. The two whistles from Vanderbilt were given at the time she sheered, Yosemite immediately began to reply with three whistles, thus signifying, pursuant to Rule 3 (p. 193), that she failed to understand the intentions of the other; but before the third whistle could be blown the collision occurred. This is undisputed, and explains Vanderbilt's claim that the two reply whistles were blown. The pilot of Yosemite gave immediate orders to reverse the engines, but after Vanderbilt sheered across his path, it was too late to stop the yacht. Craig, pp. 85, 86, 87; Capt. Eldridge, pp. 114, 115; Haines, pp. 132, 133; Belden, pp. 150–152; Johnson, p. 79.

The details of the testimony are stated more particularly under the fourth and fifth points.

The exceptions are of three kinds:

1. To the refusal to dismiss the complaint, at the close of the plaintiff's testimony, and again at the close of the case; pp. 70, 181.

2. To the charge and refusals to charge as requested, pp. 185–188, 190–191.

3. To the admission of incompetent evidence.

The assignments of error relate only to those rulings on the trial which were against rights claimed by the plaintiff in error under the statute of the United States relating to the navigation of vessels. They are at pp. 220–223.

In the following specification they are classified according to subject, but numbered as in the record.

Assignments of Error.

Range Lights.

First.—The Supreme Court of the State of New York, and the Court of Appeals of said State, in affirming the judgment of the Supreme Court, erred in holding and deciding that the yacht Yosemite, named in the record aforesaid, was not an ocean going steamer, and that she was in fault and liable in damages for not carrying range lights, whereas it distinctly appears in the said record that said yacht was an ocean going steamer and did have the lights required by the law of the United States to be carried by said steamers—that is to say, a bright white light at the foremasthead, a green light on the starboard side, and a red light on the port side, and erred in deciding against the right and immunity claimed by the plaintiff in error under the

statute of the United States in such case made and provided. (See Opinion, pp. 208–210, and rulings on trial quoted under subsequent assignments.)

Third.—The said Supreme Court erred in charging the jury that as matter of law the said Yosemite, upon the occasion of the collision mentioned in the pleadings, was bound to have and display central range lights, and the Court of Appeals erred in affirming the said ruling of the Supreme Court. (Charge, p. 182; exception, p. 185.)

Fourth.—The refusal to charge as requested in the first request, was error. This was as follows:

1. If the yacht Yosemite was not a "coasting vessel" within the rules and regulations prescribed by Congress, then the lights she carried and displayed at the time of the collision were those authorized by law, and she was free from blame or liability in that regard (p. 185).

Fifth.—The refusal to charge the second request was error. This was as follows:

2. That a coasting vessel is one engaged in the coasting trade (p. 185).

Sixth.—The refusal to submit to the jury as requested in the third request was error. This was as follows:

3. The defendant then requested the Court to submit to the jury the question whether the Yosemite was at the time engaged in the coasting trade and whether she was, in fact, a coasting vessel (p. 185).

Seventh.—The refusal to charge as requested in the fourth request was error. This is as follows:

4. The defendant then requested the Court to charge that if the Yosemite was not a coasting vessel at that time, then she carried and displayed the lawful lights and is free from all blame in that regard (p. 185).

PRUDENTIAL REQUIREMENTS.

Second.—The said Supreme Court and the said Court of Appeals erred in holding and deciding that the rules and regulations for the navigation of vessels prescribed by the Revised Statutes of the United States were not binding absolutely upon persons navigating vessels upon the waters of the United States, but were merely prudential requirements which might be disregarded with impunity if, in the opinion of a jury, such compliance was for the time unnecessary or inexpedient.

The ruling thus assigned as error was in effect made on refusing the successive motions to dismiss the complaint, and also in the refusals to charge as requested on the subject of the whistles, and the lookout, hereinafter quoted.

Twenty-fifth.—The denial of the motion to dismiss the complaint at the close of the plaintiffs' case was error, for the first, third and fifth reasons therein stated (p. 70).

Twenty-sixth.—The denial of the motion to dismiss the complaint at the close of the whole testimony was error, for all the reasons therein stated (p. 181).

The reasons assigned for the first motion are as follows (p. 70):

First.—That the Yosemite, at that time, carried lawful lights; that she came under rule three of the statute requiring a headlight and the colored sidelights; that she was not a coasting vessel, nor proceeding under the coasting law, but was expressly forbidden by the statute to engage in the coasting trade; that she did not come under rule seven, but was, as in that rule stated, "otherwise provided for"; that she was a yacht under section 4214 of the Revised Statutes of the United States, and not a coaster, and that she was an ocean-going

steamer, and also was a steamer carrying sail and had a yachting license, and not a coasting license.

Second.—That the plaintiff has failed affirmatively to disprove contributory negligence.

Third.—That it was negligence in law on the part of the Vanderbilt to give the two whistles after she had responded by one to the one from the yacht Yosemite.

Fourth.—That the pilot was incapable.

Fifth.—That the Vanderbilt was guilty of contributory negligence in not having a proper lookout at a proper place.

The reasons assigned for the second motion to dismiss are as follows (p. 181):

"The defendant moved upon the whole testimony to dismiss the complaint, upon the grounds stated when plaintiff rested, and also on the grounds following: First, that the Yosemite's lights were right, because she was not a coasting vessel; second, that she was not engaged in the coasting trade, and all coasting vessels are necessarily engaged therein; third, that the Yosemite did not come under Rule 7 of Section 4233 of the Revised Statutes; fourth, that the Vanderbilt was negligent, because it now appears affirmatively, and by such testimony as makes it here a fact in law, that the two whistles given by the Yosemite, after the two whistles of the Vanderbilt, were not intended, and were not given in answer to the two whistles of the Vanderbilt, but were the first two whistles of three alarm whistles which the pilot of the Yosemite started to blow, and that the crash and collision came before he could blow the three alarm whistles; because the blowing of the two whistles of the Vanderbilt and the attempt to blow three alarm whistles on the Yosemite, and the rank sheer of the Vanderbilt across her bow, and the actual collision were so near together, the three alarm whistles could not be blowed nor completed."

Whistles.

Eighth.—The refusal to charge the eighth request was error. This is as follows:

8. As the proof is undisputed that the steamboat Vanderbilt and the yacht Yosemite were approaching each other head and head, or nearly so, the law prescribes their duties respectively in regard to blowing their whistles (p. 186).

Ninth. The refusal to charge the ninth request was error. This is as follows:

9. If the yacht Yosemite, as the vessels were approaching each other, blew a single whistle, and the steamboat Vanderbilt answered it by a single whistle, the course which each was thereupon bound to pursue became thereby determined, and each vessel was bound to pass to its own right, that is, to the port side of the other vessel, which would have been the Vanderbilt to the west, and the yacht Yosemite to the east (p. 186).

Tenth.—The refusal to charge the tenth requst was error. This is as follows:

10. The pilot who first blew the first whistle thereby had the right to and did determine the course which each was then to adopt (p. 186).

Eleventh.—The refusal to charge the eleventh request was error. This is as follows:

11. The blowing of the single whistle by the steamboat Vanderbilt after the first single whistle from the yacht Yosemite was an acceptance by the steamboat Vanderbilt of the election of the course so adopted by the yacht Yosemite, and it then became the duty of the steamboat Vanderbilt to pass to the port or western side of the Yosemite (p. 186).

Twelfth.—The refusal to charge the twelfth request was error. This is as follows:

12. After the single whistle from the Yosemite

had been accepted by the single whistle from the Vanderbilt, the Vanderbilt had no authority or right to blow two whistles or to alter the legal agreement made by the single whistle that each should pass on the port side of the other (p. 186).

Thirteenth.—The refusal to charge the thirteenth request was error.

This is as follows:

13. As the evidence is clear and undisputed, as given on behalf both the plaintiff and the defendant, that the yacht Yosemite blew the first single whistle, and that thereupon the steamboat Vanderbilt blew her single whistle, it follows that the Vanderbilt, in blowing thereafter the two whistles, violated the law, and became thereby guilty of contributory negligence (p. 187).

Fourteenth.—The refusal to charge the fourteenth request was error. This is as follows:

14. Even if the Vanderbilt, after having by one whistle accepted the one whistle of the yacht, had a right to change the conditions and course by a blast of two whistles, yet, unless these two whistles were given in time to enable the yacht to go in safety to the west of the Vanderbilt, they would tend to confuse and complicate the situation, and the Vanderbilt was, in that event, guilty of negligence in giving the signal of two whistles (p. 187).

Fifteenth.—The refusal to charge the fifteenth request was error. This is as follows:

15. The two whistles blown by the yacht Yosemite, after the two whistles of the Vanderbilt, were a part, and the first two, of three alarm whistles. This is adequately proved, and is not contradicted, and is to be taken by you as a fact. They were not an acceptance of the two whistles of the steamboat Vanderbilt, nor a consent to change the contract and course (p. 187).

Sixteenth.—The refusal to charge the twenty-third request was error. This is as follows:

23. If the two vessels would have passed each other in safety, and without collision, had they kept on their course as it was when the Yosemite blew her single whistle and the Vanderbilt accepted it by her single whistle, then the acknowledged change of the course by the steamboat Vanderbilt, by her rank sheer to the east, which brought her across the bows of the yacht Yosemite, was an act of carelessness which should prevent the plaintiffs' recovery (p. 188).

Seventeenth.—The refusal to charge the twenty-fifth request was error. This is as follows:

25. If the steamboat Vanderbilt, being a vessel 28 feet wide and about 207 feet in length, by her rank sheer to the east, upon her blowing her two whistles, after her acceptance by a single whistle of the single whistle of the Yosemite, notwithstanding her swing around to the eastward and her turn across the river, only then brought herself in such a position across the bow of the Yosemite that she was struck at right angles, or nearly so, only some fifty-five feet from her bow, forward of the forward gangway, it is for you to say whether, if she had continued her course down the river, and had not sheered across it, the two vessels would have passed in safety, and if they would have so passed, then the Vanderbilt was culpable, and plaintiff cannot recover (p. 188).

Lookout.

Eighteenth.—The refusal to charge the thirty-ninth request was error. This is as follows:

39. This lookout had no business in the wheelhouse nor in helping the wheelsman (p. 190).

Nineteenth.—The refusal to charge the fortieth request was error:

40. While on duty, the attention of the lookout

should not be diverted by any other occupation on the boat from his duties as a watchman for lights and a lookout, and if he went into the wheelhouse or gave help at the helm during the time the Yosemite and Vanderbilt were approaching and near each other, he was unlawfully engaged and violating his duty as a lookout, and it was negligence on the part of the Vanderbilt (p. 190).

Custom as Controlling Statutory Rules.

Twenty-first.—The objection of the plaintiff in error was well taken to the following question put to Frederick Bell:

"Do you have any lookout beyond what you have in or about the pilot house?" "Objected to on the ground that the lookout required is a question of law, and not of custom of other vessels" (p. 222, p. 17, marg. p. 26).

Twenty-second.—The objection of the plaintiff in error was well taken to the question put to Edward Post:

"In running on the river have you ever seen north of New York, in the night-time, a vessel with such lights on as the Yosemite had?" "Objected to as immaterial, as irrelevant, and it is a question of what kind of lights they should have, and not what this witness has seen" (p. 223, p. 46, marg. p. 67).

Twenty-fourth.—The objection of the plaintiff in error was well taken to the question put to Henry O. Nichols:

"From your experience as a boatman on the Hudson river, would a steam vessel with a mast-head light (white light) and no bow light be a usual or customary light for a steam vessel to navigate the Hudson river?" Same objection as before; overruled; defendant excepts. (p. 222, p. 60, marg. p. 87).

POINTS.

First.

Range Lights.

On the first trial of this case Judge Ingalls held that Yosemite should have carried range lights, because she was navigating a river of the United States, and that she was in fault for not having them. On appeal the General Term of the New York Supreme Court held that under the navigation rules Yosemite was not bound to carry range lights. The decision is reported, 34 Hun, 571. The case went down for a new trial and the complaint was dismissed, but the judgment for the defendant was reversed in the Court of Appeals (104 N. Y., 86.) A third trial was ordered, the result of which has been before stated.

The conflicting arguments in the State Courts as to the proper construction of rules 2, 3 and 7 (U. S. Rev. Stat., § 4233) deserve careful consideration. (The first seven rules are printed at pp. 194, 195 of the Record.) The ground taken by the Supreme Court was this: Yosemite was an ocean going steamer. Under Rule 3 she was required to carry a white masthead light, a green light on her starboard side, and a red light on her port side. Rule 2 directs that no other light should be carried by her. Rule 7 applies to the following vessels, only:

1. "Coasting steam vessels." This Yosemite was not.

2. "Steam vessels other than ferryboats and vessels otherwise expressly provided for, navigating the bays, rivers or other inland waters of the United States, except those mentioned in Rule 6."

The Supreme Court held that Yosemite was a vessel "otherwise expressly provided" for by the third rule, and therefore, not subject to the seventh.

In construing the statute on this subject it may be useful to advert to the origin of the law on the subject of range lights. These were first required in 1826 by the Legislature of New York, Laws 1826, Ch. 253. This was re-enacted by the Revised Statutes of N. Y., Part 1, Chap. 20, Title 10, Sec. 8, Vol. 1, Edmonds Ed. Marg. page 684, Vol. 3, p. 2246, Bangs 8th Ed.).

It is as follows:

"Whenever any steamboat shall be navigating in the night time the master of such boat shall cause her to carry and show two good and sufficient lights, one of which shall be exposed near her bows and the other near her stern, and the last shall be at least twenty feet above her deck."

At the time this statute was passed, (1827) no side lights were required to be carried by any vessels and there were no ocean going steamers.

Subsequently the maritime nations agreed in adopting rules for the prevention of collision. Congress took action on the subject, and the rules adopted by it are embodied in the United States Revised Statutes, Section 4233. Section 4412 gave the supervising inspectors power to establish additional regulations for inland navigation. Plainly these rules supersede all conflicting regulations adopted by the States.

Gibbons *vs.* Ogden, 9 Wheat., 1.
Morgan *vs.* Louisiana, 118 U. S., 455, 464.

This proposition the Court below does not dispute. But the two Judges who delivered opinions

holding Yosemite bound under the Federal statute to carry range lights, came to that conclusion for reasons very different.

Judge Andrews argument in his opinion delivered upon the first appeal to the Court of Appeals may thus be stated:

Under the 7th collision rule, all "coasting steam vessels" must carry range lights. The Yosemite was a coasting vessel, because she was enrolled under Title 50 of the Revised Statutes, which applies only to vessels in domestic commerce. Therefore she was bound to carry range lights, and her not doing so was a fault.

The fallacy in this argument lies in the assumption that Title 50 applies only to vessels engaged in domestic commerce, that all vessels enrolled under it are coasting vessels, and that when a vessel has once been enrolled, and thus becomes a coasting vessel, she never loses that character. It is true that Title 50 is entitled "Regulation of vessels in domestic commerce." It codifies the original navigation laws, going back to the Act of 1793, which were intended to secure to American vessels the monopoly of the coasting trade. But when commerce sprung up on the great lakes, and it became convenient, and sometimes essential, for vessels to ply between American and British ports on the lakes, other acts were passed, which are also incorporated in this title, and which authorize a vessel navigating the waters on the north, northwestern and northeastern frontiers, to be employed in foreign trade on such frontiers, without a certificate of register.

U. S. Rev. Stat. Sect. 4318.

The difference between a register and an enrollment is very clearly stated in the Mohawk, 3 Wall., 566.

Beside the purpose of the legislation which has been referred to, to give American vessels the monopoly of the coasting trade, certain privileges in regard to the transportation of foreign goods were originally given to American built ships. Our navigation laws have always, with one or two exceptions, prevented American citizens from buying foreign built vessels and sailing them under the American flag.

To secure to American built ships whatever privileges belong to an American vessel, the scheme of registration embodied in the 48th Title was provided. But American built vessels never had, under our laws, a monopoly of the foreign trade, and the distinction between an enrollment and a registration recognized this actual distinction between the monopoly of the coasting trade given to American vessels, and the privileges in the foreign trade, which did not amount to a monopoly. It often happened that a vessel would at one time engage in the coasting trade, and then be transfered to the foreign trade; and to provide for such change, a statute was passed allowing the owner of a vessel engaged in the coasting trade to surrender his enrollment and register his vessel, or to surrender his register and take out an enrollment. This was part of the original Act of 1793, and is codified in Sections 1422 and 1423 of the U. S. Rev. Stat. which are included in Title 50.

As was said by Mr. Justice Wayne, delivering the opinion of this Court in

Conway *vs.* Taylors' Executors, 1 Black, 603, 633:

"The enrollment of the Commodore ascertained her ownership and gave her a national character. The licence gave her authority to carry on the coasting trade."

In Badger *vs.* Gutierrez, 111 U. S., 734, the Court say:

"It is to be understood that every vessel of the United States which is afloat is bound to have with her, from the officers of her home port, either a register or an enrollment. The latter is used when she is engaged in domestic commerce, commonly called the coasting trade."

Subsequently to the legislation which has been thus referred to, the practice of yachting sprung up, and the exactions of previous legislation which referred in spirit though not in letter, only to vessels engaged in traffic, lost their reason as applied to yachts. Accordingly the Acts of August 7, 1848, and June 29, 1870, which are codified in section 4214 of the Revised Statutes, were passed. These form a part of Title 48, and their material portions are as follows:

"The Secretary of the Treasury may cause yachts used and employed exclusively as pleasure yachts, and designed as models of naval architecture, if entitled to be enrolled as American vessels, to be licensed on terms which will authorize them to proceed from port to port of the United States *and by sea to foreign ports*, without entering or clearing at the Custom House. * * * * Such vessels so enrolled and licensed *shall not be allowed to transport merchandise or carry passengers for pay.*

The Yosemite was enrolled January 20, 1881, under Title 50 (Record, pp. 11, 12). Subsequently, May 27, 1882, she took out a license under Title 48 (Record, pp. 10, 11). The effect of this license thus taken out was to authorize her to proceed by sea to foreign ports. The certificate of inspection authorizes her "to navigate for one year the waters at any ocean route" (p. 13). She had frequently been at sea, and was to all intents and purposes an ocean steamer. She was "schooner rigged, carry-

ing sail" (pp. 84, 97, 116, 117). She was 182 feet long, 23.8 feet beam, and 18.7 feet depth of hold (p. 11). Fifty years ago she would have been a large ocean steamer. Now she is a small one. But in either case she is certainly, in fact, an ocean going steamer, and a steamer carrying sail. It is equally clear that she never was in the ordinary sense of the term, a coasting steam vessel. Webster defines a coasting vessel as "a vessel employed in coasting; a coaster." He defines coaster "a vessel that is employed in sailing along the coast or is licensed to navigate or trade from port to port in the same country."

The mere fact that a vessel does sail from one port to another in the same country does not make her a coaster. It is very common, for example, for a vessel to take cargo to Boston, proceed to New York in ballast, and take on a return cargo there. This practice is recognized by statute.

U. S. Rev. Stat., Sect. 4347.

"This section shall not be construed to prohibit the sailing of any foreign vessel from one to another port of the United States, provided no merchandise other than that imported in such vessel from some foreign port, and which shall not have been unladen, shall be carried from one port or place to another in the United States."

It is to be noted that this section is also included in Title 50 of the Revised Statutes. No one would think of calling a British ship that had sailed from Liverpool to Boston, and then around to New York, a coasting vessel. Yet she would have sailed from one port to another along the U. S. coast. At one time all the Cunard steamers touched at Halifax on their way to Boston. No one would think of calling them coasters or coasting vessels. It is obvious, not simply from the definition before quoted,

but from our knowledge of ordinary uses, that the terms coaster and coasting vessel are applied solely to vessels that are exclusively engaged in coasting, and ordinarily to those engaged in the coasting trade. No one would think of calling the Vigilant a coasting vessel. Much less would any one apply this term to yachts like the Valiant or the Nourmahal, which are as large as many steamers engaged in foreign commerce. Yet, according to the construction of the Court of Appeals, the Valiant, the Nourmahal, in fact all American steam yachts, are coasters. To put such a construction upon a statute, is to set a trap for the unwary. The rule is well settled that words in a statute are to be construed according to their ordinary meaning, unless the context shows that some different meaning was in the mind of the legislators. Certainly no context in the present case evinces any such intention.

We have shown that the reasons given for Judge Andrews's position, that all vessels enrolled under Title 50 are necessarily coasting vessels, is unsound, because that title contains many provisions relating to vessels engaged in foreign commerce, and especially contains provisions authorizing the transfer from the list of vessels engaged in domestic commerce, to the list of vessels authorized to sail to foreign ports. This in the case of transatlantic commerce, must be done by change from an enrollment to a register. In the case of yachts, it can be done by simple license. In either case the steamer has the right to navigate the ocean and is an "ocean-going steamer."

This becomes especially clear when we remember that when a steamer carries sail, range lights upon her would in many positions not be descried. We cannot suppose that Congress would have required such vessels to carry lights which sometimes would

show and sometimes would not. The explicit directions of clauses A, B and C, Rule 3 (§ 4233) make this manifest. The head light must be "so constructed as to show a uniform and *unbroken* light over an arc of the horizon of twenty points of the compass." Both green and red lights must "show a uniform and unbroken light."

Rule seven, which regulates range lights, requires the after light "to show all around the horizon." It must be "at least fifteen feet above the light at the head of the vessel." The foretopsail or maintopsail would hide it from vessels approaching from points ahead (pp. 115, 126). Therefore rule three requires "steamers carrying sail" to carry a bright white light at the foremast head, "*and no other.*" (Rule 2.)

There was a dissenting opinion in the Supreme Court. This held Yosemite bound to carry range lights, but reached the conclusion only by disregarding the words "*other than ferry boats and vessels otherwise expressly provided for.*" At page 579, 34 Hun, the Judge says: "If it be asked, to what do the words 'otherwise expressly provided for' apply, it may be said that perhaps they are words of caution either as to present or future or possible provisions." The intimation follows that they may apply to small boats driven by steam power. This conjecture seems unreasonable. There is no more express provision for small steam boats than there is for ocean-going steamers, and if the clause referred to excepts one, it would seem clearly to except the other, so that upon the ground taken in the dissenting opinion, the words referred to are entirely unnecessary, and should be omitted. This is a liberty that the Court ought not to take with these rules, which have been very carefully considered, were drawn with an accuracy unusual in ordinary statutes, and with reference to the use to

which they should be put by navigators. It would be most dangerous to disregard any portion of them. What would be thought of a navigator who, when charged with negligence for following the provisions of a rule, should say that as he understood it, some particular clause was to be disregarded?

Following the proposition that the words "vessels *otherwise expressly provided for*," had no application to the case, Judge Landon held that she was bound to carry range lights, because she was navigating inland waters.

If this contention is sound, the rule requires range lights to be carried in bays and harbors and all inland waters as well as rivers, and "ocean going steamers" entering harbors must change their lights.

All vessels entering the harbors of the United States from the ocean, continue to carry their ocean lights and do not change to the range lights.

If Rule 7 is to be construed as requiring ocean going steamers, to carry range lights when navigating the "bays, lakes and rivers," the universal custom of the immense foreign commerce of the ocean ports will be changed, by a ruling of the Court. The rule does not admit of a construction which allows one class of lights for ocean going steamers in the bay of New York, and the Hudson river opposite the city, and another rule above the city.

Second.

The rules of navigation binding enactments and not mere prudential regulations.

The second assignment of error is even more im-

portant than the first. It relates to the effect to be given to all the rules of navigation. The Court below treated them as recommendations only. It submitted to the jury the question of negligence at large and declined to hold or to charge that these rules had any binding force. In effect the charge and the refusals to charge said to the jury: If you think that the violation by Vanderbilt of the United States rules of navigation was negligence you must find for defendant. If you think it was not, your verdict should be for plaintiffs.

There was no dispute that Vanderbilt violated either the 18th or the 19th rules.

U. S. R. S., § 4233.

Rule Eighteen.—If two vessels under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Rule Nineteen.—If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

It was undisputed that she violated the inspectors rules as to whistles (1, 2, 3, pp. 192, 193), and rule 44 (last paragraph, p. 199), as to the lookout.

Yet the Court refused to dismiss the complaint, and refused to charge that these rules were of binding force. The details will be considered under the following points. Now we claim that the plaintiff in error had a right to have the statutes of the United States (Rev. Stat., Sections 4233 and 4412), stated to the jury as rules absolutely binding upon navigators, and consequently upon juries. This right was denied by the State Court.

It is of the utmost importance that the State Courts should administer the law on the subject of

collisions so as to correspond to the decisions of the Federal Courts on the same subject. It would be a great public misfortune—indeed a reproach to the administration of justice—if the determination of the question under a federal statute, whether or not the navigation of a ship in a particular case had been negligent, should depend upon the locality of the Court House in which the cause should be tried. The Congress of the United States, which has jurisdiction of the subject, has adopted certain rules for the prevention of collision, which must govern in all such cases. If the enforcement of these rules is to be left to the discretion of juries in each particular case, the result will be absolute confusion. The rules are statutory. They have the same binding force that all other statutes have. Their construction is for the Court. Whenever (1), the facts of a given case are undisputed; or (2), the evidence presented by the plaintiff brings a case within the scope of the rules—it is the duty of the Court to determine as a matter of law upon the facts thus before the jury, what the application of a rule should be in that particular case.

There are certain propositions which have been adopted by the Federal Courts in construing these rules, to which the attention of the Court is especially called, and which are conclusive of the present case.

1. The rules, if observed, are adequate to prevent collisions.

2. Collisions are caused by disobedience to the rules.

3. It is necessary, therefore, in order to prevent collisions, to enforce the rules strictly.

4. It should not be left to the discretion of captains, whether or not in a particular case, to obey the rule.

5. Each captain is bound to act on the assumption that the other will obey the rule.

The Scotia, 14 Wall., 170.
The Free State, 91 U. S., 200.
The Araxes and the Black Prince, 15 Moore, P. C. Ca., 122.

6. Obedience to the rules is not a fault, even though it should subsequently transpire that a different course would have prevented the collision. It is true in all collision cases, that if either party had acted differently, there would have been no collision.

The Sappho, 9 Jurist, 560.
The Friedrich, L. R., 2 Privy Council Ca., 25.

The attention of the Court is especially directed to the following considerations and authorities in support of these propositions.

It is of great importance that the Courts, in collision cases, should adhere strictly to the rules made for the purpose of preventing collisions. If they are not strictly enforced, they are really worse than useless, because neither captain can tell whether the other will adhere to them or not, and consequently has no basis upon which to guide his own action. But if the rules are strictly enforced by the Courts, each captain can rely upon the observance of them by the other, and can guide his own action intelligently and with security in his own ship.

For this reason the cases constantly comment on the failure to observe the rules, as the usual cause of collisions.

As Sir James W. Colville observed, delivering the opinion of the Privy Council in the Byfoged Christ-

ensen and the William Frederick, L. R. 4 Appeal Ca., 669, 672 :

"To leave to masters of vessels a discretion as to obeying or departing from the sailing rule is dangerous to the public ; and to require them to exercise such discretion, except in a very clear case of necessity, is hard upon the masters themselves, inasmuch as the slightest departure from these rules is almost invariably relied upon as constituting a case of at least contributory negligence."

And in the Sunnyside, 91 U. S., 208, 209, the Court say :

"Marine collisions are every year becoming more and more frequent, and experience shows that a large portion of the disasters result from the neglect of those in charge of the vessels to comply with the rules of navigation."

A State statute with reference to the navigation of the East river, no more peremptory than the Federal statute, was held to impose an absolute duty in

The Bay State, 3 Blatchf., 48.

In that case, the Court (Nelson, J.) said :

"This law is peremptory. The masters of vessels are bound to obey it, and have no discretion, except in cases of necessity. It is a mistake, on the part of those navigating vessels in this harbor, to suppose that they may indulge the exercise of their own judgment and discretion in regard to the proper mode of navigation If they disregard the statute, they do so at their peril. In such cases they are not only guilty of a crime, according to the statute, but they must take the hazard of the consequences to their vessels, when so out of the proper track and on an illegal course."

Third.

Rules of Supervising Inspectors.

Additional regulations to secure the safety of vessels have been adopted by the Board of Supervising Inspectors under the authority of the Act of Congress, U. S. Rev. Stat., Sec. 4412, p. 859, re-enacting the Act of February 28th, 1871, (16 U. S. Stat. at Large, 450), which is as follows:

"The Board of Supervising Inspectors shall establish such regulations to be observed by all steam vessels in passing each other, as they shall from time deem necessary for safety."

The rules prescribed in pursuance of the statute had the force of a statutory enactment.

The Dentz, 29 Fed. Rep., 525.
The T. B. Van Houten, 50 Fed. Rep., 590.
Gratiot *vs.* U. S., 4 How. (U. S.), 80, 117.
Ex parte Reed, 100 U. S., 13, 22.
U. S. *vs.* Barrows, 1 Abb. (U. S.), 351.
Erwin *vs.* Neversink S. Co., 88 N. Y., 184.
Matter of Moore, 108 N. Y. 280

Fourth.

The Vanderbilt was negligent.

Upon the undisputed testimony, the negligence of Vanderbilt contributed to the collision, and her owner cannot recover.

The motion to dismiss the complaint should, therefore, have been granted, and the exceptions to the refusal to do so are well taken (Record, pp. 70, 181). The testimony being undisputed on the points hereinafter mentioned, the plaintiff in error

was entitled to have the various requests given, the refusal of which is assigned for error.

The facts bearing on this proposition are admirably stated by Judge Gray (pp. 210–214).

Vanderbilt's First Fault.

The first fault which the pilot of the Vanderbilt committed, was that he did not give several short and rapid blasts of his whistle, and slow to a speed barely sufficient for steerage way.

Inspector's Rule three expressly requires as follows (p. 193):

"If, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given, or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam whistle; and if the vessels shall have approached to within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerage way until the proper signals are given, answered and understood, or until the vessels shall have passed each other"

This rule Whitaker knew (p. 30).

There are several things which are admitted by Whitaker, Vanderbilt's pilot, which ought to have warned him to slow. He testifies that he thought Yosemite was going to the west of him, and that, therefore, he headed his boat more to the eastward (pp. 25, 29). He admits that if she had been going to the west of him he ought to have seen her green light (p. 26). He admits at p. 26 that he did not see it. He also admits and testifies that he could not make out what Yosemite was (p. 25), owing to the fact that she had no range lights, and this is one of the faults which he imputes to her (p. 71). He testifies that at the time the one whistle was blown, the vessels in his opinion were not over 500 yards apart (p. 27).

This he has probably underrated. The distance was in all probability half a mile. The annexed diagram which is drawn to a scale shows it must have been about that distance, and this is Craig's estimate of it (p. 87). It could not have been more than this. But the nearer they were the more serious his fault. Rule three was imperative, that as Vanderbilt failed to understand the course or intention of the other, and the vessels had approached within half a mile of each other, "both shall be immediately slowed to a speed barely sufficient for steerage way, until the proper signals are given, answered and understood, or until the vessels shall have passed each other." This violation of the rule is perhaps the most flagrant of all, because the least excusable. Whitaker admits that he did not understand what Yosemite's course was (p. 29). The only thing for him to have done under the circumstances was what the rule required, which was to slow.

Slowing is required, not only by the Inspector's rule, but by Rule 21, Rev. Stat., § 4233.

"*Every vessel, when approaching another vessel so as to involve risk of collision, shall slacken her speed, or if necessary, stop and reverse.*"

The Manitoba, 122 U. S., 97, affig. 2 Flipp., 241.
The Teutonia, 23 Wall., 77.
Nelson *vs.* Leland, 22 How., 48.
The Hochung and the Lapwing L. R., 7 App. Cas., 512.

The latter case presents many featnres exactly analogous to the case at bar.

It is gross negligence to change the helm, and not to slow, when a steamer is approaching and her direction is unknown.

The Britannic, 39 Fed. Rep., 395, 399.
The Hammonia, 4 Bened., 515, 520; aff'd 11 Blatchf., 413.
The Kirby Hall, L. R., 8 Prob. Div., 71.

This is precisely analagous to the rule requiring travelers to observe and listen before crossing a railroad track.

Heaney *vs.* Long Island R. R., 112 N. Y., 122.
Tolman *vs.* Syracuse, &c. R. R., 98 N. Y., 198.

It is not surprising that Whitaker committed this fault for he admits he was ignorant of the rule (p. 71).

Vanderbilt's pilot gave no order to slow until after the two whistles were blown, nor until he had changed his course, so as to throw himself directly across the bows of Yosemite (p. 27). After he had done this slowing was the one thing he ought not to have done. He might possibly, if at full speed, have crossed her bows. To undertake to cross the bows of an approaching vessel, and to slow at the same time, is madness.

This reversal of Vanderbilt's engines just before the collision was too late. Such a tardy manœuvre does not excuse previous negligence. Precautions not taken seasonably are of no avail.

The America, 98 U. S., 432, 437.

In this case, the Court says :

"Inability to do anything effectual to prevent a collision at the moment it occurs usually exists ; but it seldom happens that there is much difficulty in tracing the cause which produced it to some antecedent neglect, carelessness or unskillfulness in those having the command of one or both of the vessels."

The Vanderbilt, 6 Wall., 225, 230.

"Precautions not seasonably taken afford no defence against the charge of negligence in cases of collision, where it appears that the disaster might have been prevented by earlier action."

The alleged defect in the lights of Yosemite does not excuse this fault of Vanderbilt. Her pilot saw Yosemite's white light, and saw it moving towards him. He heard her first whistle at a distance of half a mile. Thus he knew she was an approaching steamer, and he is chargeable in law with the duty imposed by that knowledge, although her lights were defective. This was held by this Court in a case where the defect complained of was the same as in this case, viz., the absence of a range light.

The Continental, 14 Wall., 345.

In this case the propeller Northampton was confessedly at fault for not carrying central range lights. She was a coasting vessel. Her mast-head-light and her sidelights were seen by the Continental at a sufficient distance to enable the latter to avoid the former. But the pilot of the Continental was misled by the fact that there was no after-light, and inferred that the approaching vessel was a sailing vessel which was showing a white light forward as she was approaching her anchorage. This excuse was allowed in the Circuit Court, but this Court held it to be entirely inadequate, and decided that the Continental was at fault. The language of the Court on this subject at page 360 is pertinent to the present case:

"She did show a bow-light, which might well have satisfied them that the vessel was not a sail-vessel, as it is more reasonable to suppose that the stern light of a steamer has become dim or extinguished than that a sail-vessel will show a light not required nor authorized by the prescribed regulations. Proper scrutiny as to the character of the approaching vessel would or should have induced greater caution on the part of the master of the Continental, and, if any doubt remained after such a scrutiny was made, the steamboat should have slackened her speed or have stopped until every

reasonable degree of uncertainty was overcome. Navigators have no right arbitrarily to assume under all circumstances that every vessel approaching which does not show both the signal lights and the central range of two white lights is a sail vessel which is bound to keep her course, and that if she does not she may be run down and sunk.

"Prior to the enactment of the sailing rules neither steamers nor sail vessels, except on the lakes, were required to carry lights of any kind, and yet the rules of navigation were substantially the same as those prescribed in the existing acts of Congress. Lights are now required, but the omission of one vessel to comply with the requirement will not excuse the other from the exercise of all due and reasonable care to prevent a collision."

Fifth.

Vanderbilt's other violations of rules of navigation.

The rules of the supervising inspectors distinctly state, and in this statement embody the result of long experience (p. 199).

"It will appear evident, that in any situation in which two vessels may approach each other in the dark, the colored lights will instantly indicate to both the relative course of each, that is, each will know whether the other is approaching directly, or crossing the bows, either to starboard or port.

"This intimation, with the signals by whistle, as provided, is all that is required to enable vessels to pass each other in the darkest night with almost equal safety as in broad day."

This is admitted by the plaintiff's own witness, Bell (p. 48).

In this case the two vessels sighted each other

when they were nearly, if not quite, two miles apart. Whitaker, the pilot of Vanderbilt, described the light of the yacht when it was abreast of or below Esopus Light, and when his own vessel was nearly opposite the upper ice-house (pp. 24, 34, 40). These points are about two miles apart. The speed of Yosemite was about 16 miles an hour (p. 27), and of Vanderbilt at that time, the tide being flood and against her, nine miles an hour (p. 49). They were approaching each other, therefore, at an aggregate speed of twenty-five miles an hour, or a mile in two minutes and twenty-four seconds. At the rate of nine miles an hour Vanderbilt would traverse a space of 792 feet in a minute, and Yosemite at a speed of sixteen miles an hour would go 1,408 feet in a minute. This scale affords an accurate measure of time.

Vanderbilt, until she was abreast of the lower ice-house, was headed for a point to the westward of the Esopus Light (p. 23). The map shows that this light is on the edge of the flat. Yosemite could not go to the westward of it, and all the witnesses agree that she did go to the eastward of it. It is, therefore, plain that until Vanderbilt came abreast of the lower ice-house, Yosemite was on her port bow; that is to say, to the left or eastward of Vanderbilt's course. Whatever Whitaker may say as to the direction in which he first descried Yosemite, it is evident that if he saw her while his steamer was headed on this course, she must have been on his port bow, for the reason already stated. He kept on this course till he was abreast of the lower lighthouse (p. 23), and during all this time it is obvious that Yosemite was still on his port bow. It is equally clear that during all this time his red light was visible to Yosemite, and indicated to her the direction in which Vanderbilt was proceeding. Whitaker says that he did not see at this

time the red light of Yosemite (p. 38, fol. 149), but he admits that he did not see her green light at any time (p. 26). He saw her white light moving and knew its direction from him. The captain (p. 114) and pilot (p. 84) of Yosemite, say that during all this time she headed for a point west of the Rhinebeck Bluff. As to this there is no dispute. These courses were parallel, and the two vessels, as long as they maintained these two courses, were in a condition of perfect safety.

Although Vanderbilt's pilot says he did not see the red light, he was bound either to keep to the right, as shown in the next section of this point, or if he was perplexed and in doubt, was bound to slow and give several short and rapid blasts, as shown under the Fourth Point, neither of which he did.

Vanderbilt's Second Fault.

The two vessels made no change in their courses until Vanderbilt was abreast of the lower ice-house, when her pilot testifies that he changed her course, and headed her for Dinsmore's house, and "kept east of the centre of the river, all the time from then until the collision" (p. 24). This house
p 62, is on the bluff, and not on the water's edge, and not therefore where the beginning of the word "Dinsmore" is printed on the map, but at its end. If Vanderbilt had steered for the point where the letter "D" in "Dinsmore" is on the map, it is obvious that she would have kept far to the westward of the channel, but keeping to the eastward as she did, she would, of course, head for the house on the bluff, east of the water's edge. Her pilot gives his reason for this, that he supposed the lights he saw on the Yosemite indicated that she

was a tow, and would want to pass up on the west side of the channel, so he went down on the east (p. 25). This supposition was manifestly erroneous, because the two vessels were approaching each other with the speed of an ordinary railroad train, and the slightest vigilance on his part would have taught him that it was impossible for a tow to approach as rapidly as Yosemite was approaching. The white light which he admits he saw distinctly (p. 24) was moving past the dark back-ground of the shore (p. 125; marg. pag. 180) and in a curving channel. It could not have been a fixed light; therefore. It was inexcusable in him to make a mistake on this subject. This was his second error, and contributed directly to the collision, for if he had kept on the right hand side of the channel, as he was bound to do, there would have been no collision. This is required by rule 18 (Rev. Stat., § 4233), already quoted. The first rule of the supervising inspectors is to the same effect (p. 192).

"When steamers are approaching each other 'head and head,' or nearly so, it shall be the duty of each steamer to pass to the right or port side of the other."

The failure to obey these rules was culpable negligence.

The America, 92 U. S., 432.
The Continental, 14 Wall., 345.
Erwin *vs.* Neversink S. Co., 88 N. Y., 184.
The Louis Dole, 5 Biss., 172.
The Clifton, 11 Fed. Rep. 586 (Wilson J.)

Under these rules, it is the duty of steamers on the Hudson river to keep to the right of the channel.

The St. John, 7 Blatchf., 220.

Vanderbilt's Third Fault.

It has been shown that as the vessels were first headed each was passing on the right or port side of the other. The change testified to by Whitaker put him on a course crossing that of Yosemite, and of course involving danger of collision. It also brought Yosemite on his starboard bow.

At this point a case for communications by signals arose, and the pilot of Yosemite gave a short and distinct blast of his steam whistle as required by law, as a signal of his intention to pass to the right or port side of Vanderbilt (p. 27, p. 79, p. 85, p. 86, p. 114, p. 132). This the pilot of Vanderbilt answered promptly by a similar blast (*ibid.*) and the rule thereupon became imperative: "Such steamers shall pass to the right or port side of each other." Whitaker admits that, although he heard the whistle of Yosemite, and answered it, he did not obey the rule, and made no change in his helm at all (p. 31). This was his third fault. He was bound to do as he had signaled.

The Galileo, 24 Fed. Rep., 386; 28 Fed. Rep., 472.

On the first trial he testified that, at this time, he saw the red light of Yosemite (pp. 70, 71), which indicated to him that her port side was the side he saw, and, consequently, that her pilot was complying with the rule, and was endeavoring to pass him on her port side. Therefore, not only because of the whistle, but because of the light, it was his duty to go to the right, show his red light to the Yosemite, and pass in perfect safety as the rule requires. As stated in the diagrams annexed to the inspectors' rules (p. 196), under the fourth and fifth situations, the red light of B in view to A, and the green light of A in view to B, will indicate that they are approaching each other in an oblique direction. The direction was not as

oblique as shown in those two situations, but the vessels were very near and the danger was imminent.

But whether he saw the red light or not, he saw the white light of a steamer, and after he headed on Dinsmore's, it was on his starboard bow.

Vanderbilt's Fourth Fault.

Under these circumstances, not only did the rules already stated require Vanderbilt to go to the right, but the statute law of the United States (Rev. Stat., Sec. 4233, p. 842, Rule 19), was peremptory :

"If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side, shall keep out of the way of the other."

The Corsica, 9 Wall., 630.

As soon, therefore, as Vanderbilt by heading for Dinsmore's, brought Yosemite on her starboard side she was bound to keep out of the way of Yosemite. This the pilot failed to do. This was the fourth fault, and was caused by his ignorance of the rule, which he himself confessed (p. 30).

Vanderbilt's Fifth Fault.

The pilot of Vanderbilt not only turned to the left when abreast of the lower ice-house, and thus failed to obey the statutes and rules, and this single whistle already given, but soon gave two whistles to signal his intention to go to the left, and immediately put his wheel hard a-starboard (p. 27), and in the space of a few seconds brought his vessel

right across the channel, nearly at right angles to her former course. This was the fifth fault and the immediate cause of the collision. This was a violation of all the rules which are applicable to the circumstances of the case. Irrespective of any whistles, he should have kept to the right and thus passed on the port side of the Yosemite. He gave one whistle signifying his intention to go on her port side. Instead of doing as by this whistle he expressed his intention to do, he did exactly the contrary. He was bound to keep out of her way, instead of which, he threw himself across her bow. He seeks to justify himself for this by saying that there was no room for him to keep to the right and thus pass on the west; but this is absurd and untrue on the face of it. The channel is wide and the plaintiff s counsel admits in his brief that both vessels were in the middle of it.

1. As Whitaker had said he would go to the right, he was bound by the express direction of the rule to steer so that his vessel should go to the right. The rule makes no mention of any change of intention. The two clauses of it are in the alternative.

The Bristol, 11 Fed. Rep., 156.

The City of Hartford, 11 Blatchf., 72.

This case was appealed to this Court on another question (97 U. S., 323), but the decree on the merits was not appealed from.

2. The folly of the means adopted by Whitaker is manifest when it is considered that Vanderbilt is 200 feet long (p. 199); that from the moment when she commenced to make the sharp sheer to the left, to the time of the collision, she passed over a space of 400 feet (p. 31) and that this brought her into a position nearly at right angles to her previous course, and 200 feet to the east of it (pp. 31, 32). It is, therefore, mathe-

matically certain, that if Vanderbilt had continued on her previous course, Yosemite would, when she arrived at the point where the collision happened, have been 200 feet to the east of Vanderbilt. This point is distinctly specified in the twenty-third and twenty-fifth requests (p. 188). Whitaker seeks to account for the collision by the statement that Yosemite followed him up, but this is what Yosemite had said to him she was going to do; that is to say, go to the eastward. It is true the whistle did not indicate the intention of making a sharp sheer to the eastward so as to head toward the shore, nor did Yosemite do this. All the witnesses agree, and this is a controlling fact in the case, that Yosemite struck Vanderbilt nearly at right angles. Some of the witnesses say that the cut in Vanderbilt's hold was directly across Others make it nearly a right angle. Craig says it was straight across (pp. 85, 86, 87).

Two diagrams are annexed which embody the theory of the facts which has just been stated. The Court will see that they harmonize, and, indeed, express in every particular the testimony for the plaintiff.

The first diagram is on the same scale as the map which faces p. 200 of the record. The vessels are located at the distance apart required by the plaintiff's testimony as to their speed. The diagram shows Yosemite to the west of the channel, and over the starboard bow of Vanderbilt at the time the single whistles were blown. This is the position in which Whitaker testifies Yosemite was when that whistle was blown (p. 27).

It shows Whitaker continuing his course after the first whistle was blown, just as he says he did.

"After the yacht blowed his first whistle I answered him right away with one, and then after

that there was nothing done. I didn't alter the order or anything of the kind " (p. 27).

The second diagram is on a larger scale, and shows the course of the two vessels from the time the two whistles were blown till the collision. It gives the distance traversed by Vanderbilt in this time, about 450 feet—less than three of her lengths (Whitaker, p. 27). It locates the collision almost immediately after the two whistles were blown. To this all the witnesses agree (p. 50 ; p. 49 ; Slatterly, p. 38).

It will be observed that the argument from these diagrams is not dependent on the accuracy of the distance. It is wholly a question of direction, which Whitaker gives from fixed objects on the shore. The angle at which the two vessels came together is, in like manner, fixed by the character of the blow, before stated.

Considerable testimony is adduced on behalf of the plaintiff, to show that the interval between Vanderbilt's reply of the single whistle, and her blowing two whistles, was very small. Dady says, three or four seconds (p. 50); Slatterly says the same (p. 38). Swift says they were very soon after the first ; just soon enough to show that they were not the first (pp. 53, 54). He admits that upon the examination immediately after the collision, before the inspectors, he said the two whistles were a minute after the first (p. 55). Whitaker says the whistles were three or four seconds after he had answered with one (p. 26). He also gave a different account before the inspectors (p. 71). This estimate of time is obviously too small. The Vanderbilt was going 13½ feet in a second ; in four seconds she would, therefore, go 53½. The Yosemite was going 23½ feet in a second ; in four seconds she would go 94 feet ; the aggregate distance traversed by the two vessels in four seconds was

147½ feet. But it is very plain from the statement of both Whitaker and Post, as to the place where the Yosemite was at that time, that they must have traversed a much greater distance than this between the single whistle and the two whistles. During this period of time they say that the Vanderbilt traversed 400 feet, that is to say, twice her length. To traverse 400 feet would occupy half a minute. The probability is that the witnesses in both instances have underestimated the time, and that the space between the first whistle and the second whistle was the same as that between the second whistle and the collision, or, as has been shown, half a minute, which would give a minute from the time the first whistle was blown until the time of the collision. During this minute the distance traversed by the two vessels would be, for the Vanderbilt, 792 feet, and for the Yosemite, 1,408 feet, an aggregate of 2,200 feet. It is on this estimate of distance that the diagram is prepared, and it agrees perfectly with the observations of all the witnesses. But the determination of this point is not essential to the decision of the case. The less the time that elapsed between the first whistle and the collision, the less the distance traversed by the two vessels, and the greater, therefore, their proximity at the time the two whistles were blown. If this time was only eight seconds, the aggregate distance traversed by the two would be about 294 feet. The nearer they were, the greater the folly of Vanderbilt's throwing herself across the course of Yosemite, and in thus exposing her side to the impact of Yosemite's bow. She did expose it; she was struck on her side and on a line nearly at right angles to the line of motion. For every reason, therefore, in view of every rule at all applicable to the situation, the collision was caused by the gross and inexcusable negligence of Vanderbilt's pilot.

Sixth.

Summary of the Argument.

Defendant in error claims that the question involved was one of fact for the jury, and that their verdict is conclusive in this Court. We maintain that on the plaintiff's own showing Vanderbilt was guilty of negligence which contributed directly to produce the collision. We ask the Court to apply to this case the same rule that it applies in cases of other actions to recover damages for alleged negligence. It has frequently held that when it distinctly appears that the negligence of the plaintiff contributed to the injury, he cannot recover, and that the Court would look into the evidence to see whether or not on the plaintiff's own showing, his negligence did not so contribute, and if so, should direct a verdict for defendant.

Schofield *vs.* Railway Co., 114 U. S., 615, 619.

The rule is the same in the Courts of New York.

Donnelly *vs.* Brooklyn City R. R. Co., 109 N. Y., 16.

Gonzales *vs.* N. Y. & Harlem R. R. Co., 38 N. Y., 440.

In this case a verdict in favor of the plaintiff should have been set aside as against the evidence, and in such a case it is the duty of the Court, under the New York practice, to non-suit, or, as the New York phrase is, "to dismiss the complaint."

Neuendorf *vs.* Insurance Co., 69 N. Y., 389, 393 and cases lastly cited.

"In every case, before the evidence is left to the jury, there is a preliminary question for the Judge,

not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof rests."

Improvement Co. *vs.* Munson, 14 Wall., 442, 448.

Gunther *vs.* Liverpool Ins. Co., 134 U. S., 110, 116.

Linkhauf *vs.* Lombard, 137 N. Y., 426.

The Court below does not undertake to say that Vanderbilt obeyed the rules of navigation. It does not deny that the starboarding of the helm of Vanderbilt, which changed her course to the eastward, contributed directly to the collision. It excuses the pilot on the ground that he was bewildered and misled by the want of range lights on Yosemite. But this assertion ignores the conceded fact that before Vanderbilt made the erroneous manœuvre of putting the helm to starboard, her pilot knew that the approaching vessel was a steamer, and at the instant of starboarding saw the red light, which indicated to him that her left or port side was towards him, and that therefore she was going to the right or eastward. He therefore ought to have known that it was gross negligence to turn himself to the left.

The pilot's testimony is thus summarized by the General Term (pp. 206, 207):

"It appears by the plaintiff's showing, that when the pilot of the Vanderbilt first discovered the light, which was subsequently ascertained to proceed from the Yosemite, the two vessels were about a mile apart; and approaching each other at the combined speed of at least twenty-five miles to the hour. It appears that the pilot, Whitaker, immediately commenced to investigate the lights, with a view to ascertain from what they proceeded, and according to his evidence, it appears that the lights displayed by the Yosemite were unknown to him, and

changed so rapidly in their appearance, as the vessels neared each other, as to baffle his inquiry, until they had approached within dangerous proximity, when he discovered the defendant's vessel. When the vessels were about five hundred yards apart, one whistle was blown from the Yosemite, which indicated an election by those in charge of that vessel, to pass to the right of the Vanderbilt, which was answered by one whistle from the last named vessel, which indicated an assent."

This statement of the pilot of Vanderbilt may be illustrated by the supposition that the case was one of a collision between the pilot and a horse and wagon, instead of between two steamers.

If a man walking on the highway should testify that he saw a light on his right, and did not know what it was, that he watched it, meanwhile continuing to walk along the road, that he soon perceived that it was approaching him, and soon after perceived that it was the light of a wagon, and heard the driver call that he was going to the right, and the man immediately thereupon turned sharply to the left and ran in that direction until he was struck by the horse, the case would be too preposterous to admit of argument. It would be manifest in such a case that the turning of the man to the left, thus running across the track of the approaching wagon was folly. This case is precisely analogous to the case stated in the testimony of Vanderbilt's pilot. He saw the high light of Yosemite in ample time before the accident to avoid a collision. He did not know what it was. He watched it moving along the dark background of the hills, and after a while discovered that it was that of an approaching steamer. It was his duty to keep to the right, instead of which he put his wheel to starboard, which threw him to the left, and directly across the path of the approaching steamer.

At the same moment that he starboarded he saw a red light on the approaching vessel which, as well as the previous single whistle, indicated that her left side was towards him, and that, therefore, she was going to his left. This change of course was his fault. It was a fault which he himself admits, and which was not at all disputed in the evidence.

It is necessary for the plaintiffs to establish not only that the defendant was at fault, but that Vanderbilt was free from negligence which contributed to the collision. Her pilot admits that he put his wheel to starboard, thus turning to the left at right angles, or nearly so, to the course of the approaching vessel. This cannot be justified in any view of the case.

The theory of bewilderment does not help him, for he admits that though he was at first in doubt, he knew before he finally changed his course that this light was that of an approaching steamer.

Seventh.

Look-out.

The forty-fourth rule of the supervising inspectors has this requirement :

"All passenger and ferry steamers *shall, in addition to the regular pilot on watch*, have one of the crew also on watch in or near the pilot-house ; and this rule applies to all steamers navigating in the night time."

This rule is imperative. But the Court refused to instruct the jury that the lookout ought not to have been employed to assist the man at the wheel. (p. 190, *before quoted.*)

The Court correctly charged as requested, that the Vanderbilt was required to have a competent and skillful lookout; and that his true position was forward, where he could advantageously discern coming vessels (Requests 37, 38, 190).

The 40th request was the logical sequence of the proposition thus charged and its refusal was a most serious error. It is, in the nature of things, impossible that a person charged with the duty of a lookout, should discharge his duty faithfully, and at the same time be busy in turning the wheel. The Court should have made this point distinct to the jury, instead of leaving them to speculate whether or not the lookout might not properly have this double occupation.

Chamberlain *vs.* Ward, 21 How., 548, 570.
The Genesee Chief, 12 How., 443.
Haney *vs.* The Louisiana, 23 How., 287.
The Tillie, 13 Blatchf., 514.
The Manhasset, 34 Fed. Rep. 417 + cases cited

In a somewhat similar case (Whitridge *vs.* Dill, 23 How., 448) this Court say, p. 453:

"From these facts, which are proved beyond doubt, it necessarily follows that the vessel of the respondents was in fault. She had no lookout, and the neglect of that precaution contributed to the disaster, and in all probability was the sole cause that produced it."

This is especially true in the present case. The only excuse given for the collision, related to the lights on the Yosemite. The pilot, Whitaker, contended that he was misled by the absence of range lights, and that the red light was dim. It cannot be disputed that a vigilant man, whose attention is entirely given to watching and observing, will perceive a light more readily than one, whose attention is distracted by his being engaged in other occupations, and that he will form a more

correct judgment as to the inference to be drawn from the change in the position of lights to which he is giving his undivided attention. The law being express that the lookout should be vigilant, and that there should be a particular person charged with the duty of lookout, and the lookout having confessedly engaged in another occupation, the jury ought not to have been allowed to speculate whether this want of vigilance contributed to produce the injury, when the only excuse given was a failure to observe what was actually discernible.

Eighth.

Usage as Controlling Rules.

The Judge on the trial admitted evidence tending to show that a lookout "beyond what you have in about the pilot house" was unusual, and also that steam vessels without range lights were unusual on the Hudson river. The exceptions to these rulings were well taken (assignment of error, 21, 22, 24; p. 222; pp. 26, 67, 69).

Thompson *vs.* Riggs, 5 Wall., 663.

At page 680, the Court say:

"Usage contrary to law or inconsistent with the contract is never admitted to control the general rules of law or the real intent and meaning of the parties."

To the same effect are

National Bank *vs.* Burkhardt, 100 U.S., 686, 692.

Colgate *vs.* Pennsylvania Co., 102 N.Y., 120.

Dykers *vs.* Allen, 7 Hill, 499.

The rulings thus excepted to are additional instances of the radical error, noted under the Second Point. A judge who denied the right of the plaintiff in error to have the United States laws relating to navigation enforced, naturally allowed evidence to be introduced tending to show that they were habitually violated. A usage to violate law may form an apology for individual transgressors, but it cannot modify the civil consequences of such transgressions. It can therefore only tend to mislead the jury. It is an inevitable inference from the clearness of the evidence of violation by Vanderbilt of the rules of navigation, that if the jury had not been misled by the evidence thus erroneously introduced, and by the failure of the Court to charge specifically as requested, their verdict would have been for the plaintiff in error.

Ninth.

The judgment should be reversed with costs.

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NOV 2 1883
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

WILLIAM BELDEN,
Plaintiff in Error,

vs.

EMERY A. CHASE and WILLIAM J. HUGHES,
Defendants in Error.

Reply to Brief for Defendants in Error.

First.

Jurisdiction.

The jurisdiction of this Court in this case is under Section 709 of the Revised Statutes.

"Where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of or commission held or authority exercised under the United States, and the decision is against the title, right, privilege or immunity specially set apart or claimed by either party, under such constitution, treaty, statute, commission or authority."

In this case plaintiff in error claimed the following rights under Sections 4214 and 4233 of the United States Revised Statutes, and also under the rules prescribed by the United States Supervising

Inspectors under Section 4412 of those statutes. These inspectors hold their commission and authority under the United States.

1. The right to navigate Yosemite on the Hudson with a masthead light and sidelights, without range lights.

2. The right in such navigation to be governed by the rules of navigation prescribed by Section 4233, and by the Supervising Inspectors under Section 4412, as binding enactments, and not mere prudential regulations.

3. The right to have the Judge dismiss the complaint, on the ground that the uncontradicted evidence showed that Vanderbilt violated these rules. and that such violation caused the collision and consequent damage.

4. The right to have the Judge give the several requests in construction of these rules which are assigned as error and specified on the principal brief.

5. The right to exclude evidence that violation of two of these rules—those as to lights and lookouts—was customary on the Hudson river.

No other points are made in the brief, but of these this Court has jurisdiction. The decision of the highest Court of the State of New York was against the rights so claimed.

The case of Cooper *vs.* Eastern Trans. Co., 990 U. S., 78, cited for defendant in error, so holds. Counsel, at page 20, says it was dismissed for want of jurisdiction. In fact, the Court considered the question there raised of construction of the Federal Statute, refused to dismiss, and affirmed the judgment.

In the leading case of Martin *vs.* Hunter's Lessee, 1 Wheat., 304, this Court state the reason for extending this appellate jurisdiction to all cases in

the State Courts in which the construction of a United States statute is drawn in question (p. 348):

"Judges of equal learning and integrity in different States might differently interpret a statute, or a treaty of the United States, or even the Constitution itself. If there were no revising authority to control these jarring and discordant judgments and harmonize them into uniformity, the laws, the treaties and the Constitution of the United States would be different in different States, and might perhaps never have the same construction, obligation or efficacy in any two States. The public mischiefs that would attend such a state of things would be truly deplorable."

This is especially applicable to a case like that at bar. The cause of action was for a maritime tort committed on navigable waters and within the admiralty jurisdiction, irrespective of citizenship. Doubtless the plaintiff had the right to elect his common law remedy. But a right to such election in cases of concurrent jurisdiction is pointed out in Martin *vs.* Hunter's Lessee (p. 342), as one of the reasons why this Court should maintain appellate jurisdiction in all such cases.

At page 335 this Court say:

"As to cases of admiralty and maritime jurisdiction, the admiralty jurisdiction embraces all questions of prize and salvage in the correct determination of which foreign nations are deeply interested; it embraces also maritime torts, contracts and offenses in which the principles of the law and comity of nations often form an essential inquiry. All these cases, then, affect the national rights and may compromit the national sovereignty. The original *or appellate* jurisdiction ought not, therefore, to be restrained, but should be commensurate with the mischiefs intended to be remedied, and of course should extend to all cases whatsoever."

Perhaps there is no species of concurrent jurisdiction in which uniformity of decision is more

desirable than in cases under the navigation rules. These mean what the Courts declare. To have the State Court of Appeals sitting at Albany declare them to mean one thing, and the Circuit Court of Appeals sitting in New York declare them to mean another would be intolerable. On this writ of error we ask the judgment of the Court upon the construction and effect of these Federal rules. We make no point on any State statute, or on any rule of navigation outside those prescribed by authority of Congress. But we do maintain that the claim of plaintiff in error to have these rules interpreted to the jury and enforced by the State Court in the same sense as they are interpreted and declared in the Federal Courts is a right claimed by him under the statute of the United States. It is obvious that the State Court decided against this right, as claimed by him, and this decision is what we now ask this Court to re-examine and reverse. The reasoning of this Court in two recent decisions sustains the jurisdiction in this case.

Huntington *vs.* Attrill, 146 U. S., 657.
Roby *vs.* Colehour, 146 U. S , 153.

The analysis of the testimony which has been given in the briefs of the plaintiff in error is not for the purpose of asking the Court to review the verdict of a jury upon conflicting evidence. It is for the purpose of showing that in point of fact the only questions raised in the Court below were those arising under the statutes of the United States, and that it is reasonably clear that the verdict of the jury was produced by the erroneous rulings of the Court upon the claim of right under such statutes made by the plaintiff in error upon the trial.

Defendants in error claim that the decision below might have proceeded on the ground that Yosemite

violated the statute as to her side lights. But the record shows that on this point there was conflicting evidence, and the Judge distinctly charged the jury (p. 182) "that the Yosemite, upon that occasion, was bound to have those lights which I have described to you as central range lights, and the absence of those statutory signals was, upon her part, negligence." To this there was an exception (p. 185). The same point is raised by the respective motions to dismiss the complaint quoted in the principal brief, and by the exceptions to the refusal to charge, as requested (p. 185).

This is especially clear because it appears on the record that under a different ruling as to range lights, the plaintiff in error had a judgment in the Court below, which was reversed by the Court of Appeals, because in its opinion Yosemite was bound to have range lights (pp. 208–210).

Counsel also claims that Yosemite had no right to navigate inland waters, because she was licensed to proceed by sea to foreign ports, but he overlooks the fact that the same license allows her to proceed from "port to port of the United States" (p. 10).

Second.

Range Lights.

Counsel seeks to construe Section 4233 of the Revised Statutes by the act of February 28, 1871 (Vol. 16, U. S. Stat. at Large, 440), codified in it.

1. No doubt the Court, when a revised law is obscure in meaning, will often seek light from antecedent legislation. But in the case at bar, this

previous legislation does not aid, and should not be resorted to. The rules of navigation embodied in Section 4233 were carefully drawn. They were intended for the constant study and use of navigators. These could not resort to the previous statutes for guidance. It would be unjust to impose upon them the duty of examining all prior laws.

2. Under the act of 1864 (13 U. S. Stat. at Large, 58), it is plain that Yosemite had the right lights. Article 3 of that statute provides: "*All steam vessels* when under way shall carry"

a. The foremast head light;

b. Starboard green light;

c. Port red light.

There is no exception whatever in the statute.

The next act on the subject is that of 1866 (14 U. S. Statutes at Large, 228). Section 11, provides:

"That the provision for a foremast headlight for steamships" in the last-mentioned act "shall not be construed to apply to other than ocean going steamers, and steamers carrying sail." Then follows a provision for steamers navigating waters flowing into the Gulf of Mexico, and the act then continues: * * "All coasting steamers and those navigating bays, lakes or other inland waters other than ferryboats, and those above provided for shall carry the red and green lights as prescribed for ocean going steamers, and in addition thereto, a central range of two white lights, the after light being carried at an elevation of about fifteen feet above the light at the head of the vessel, * * and the after light to show all around the horizon."

If Yosemite was either an ocean going steamer or a steamer carrying sail, it is plain that under this statute she was not required to carry range lights.

2. Counsel does not quote correctly Section 47 of the Act of 1871 (16 Stat. at Large, 453, 454). Its material portions really read:

"Every coasting steamer, and every steamer navigating bays, lakes or other inland waters, other than ferryboats and those above provided for," shall carry colored side lights and range lights. * * * "The provision for a foremast head-light for steamships," in the act of 1864, "shall not be construed to apply to other than ocean-going steamers and steamers carrying sail."

Here, then, we have the same necessity for construction that exists in the Revised Statutes.

3. A foremast head light is inconsistent with range lights. In the latter the bow light is low, the after light high. In the latter the foremast head light is high. No steamer can, without confusion, carry both. And therefore the question recurs, even under the act of 1871, What are

"ocean-going steamers and steamers carrying sail"?

Do these words designate the character of the steamer, or do they indicate the place where she may happen to be?

These expressions in the statute are words of description; they denote the character and structure of the vessel.

The first expression "Ocean-going steamer" means a vessel constructed and adapted to the navigation of the ocean. The word "going" is indicative of a quality or capacity, rather than of motion.

Thus we speak of a "trotting horse" or a "trotting wagon," meaning thereby that they are especially adapted by their peculiar characteristics to be used for trotting purposes; of a "singing master" or a "dancing master," meaning one who is a

master of the art of singing or dancing; of a "cooking stove," meaning a stove adapted to cooking; of a "flying machine," meaning a machine capable of flight through the air; or of a "fighting regiment," meaning a regiment which is unflinching in battle.

The fighting regiment does not lose its name when the battle is over, but has rather strengthened its claim to the title; the cooking stove is a cooking stove none the less although no fire has ever been kindled within it; a trotting horse is a trotting horse so long as wind and limb remain sound, and he retains the capacity to respond to his trainer's call upon the race track; and the "ocean going steamer" which has breasted the waves of the stormy Atlantic, is an ocean going steamer still when she lies securely moored in port.

If any other idea had been intended, we should naturally expect a very different expression. If the expression should refer only to vessels actually navigating the ocean for the time being, why should so obscure a manner of stating that idea have been resorted to, when it would have been simpler and plainer to have said, "steamers while navigating the ocean."

Rule one declares that a steamer when under sail and under steam shall lose her character of a steamer for the time being, and shall be considered a sail vessel. A sail vessel, and therefore a steamer under sail only, is prohibited by Rule eight from having a white masthead light at any time; but a steamer carrying sail is expressly directed by Rule three to have one.

The reason for the distinction is obvious. A sail vessel or a steam vessel under sail and deprived of its steam power is propelled by wind alone, and thus is less the master of its own movements than steam vessel propelled by steam. And upon this

difference is founded the well known rule, that a vessel under steam is bound to keep out of the way of a vessel under sail. But steamers carrying sail when under steam, whether they are also under sail or not, are under the same rule, to be regarded as steam vessels.

One other expression of Rule three confirms our view. If "ocean going" meant "while traversing the ocean" and carrying sail meant "under sail," those expressions would themselves denote that the vessels referred to were in motion, and the limiting words "when under way" would have no force or application.

The argument for defendants in error not only requires the construction that the lights a steamer shall carry are to be determined by the place she is in, but also, and independently of this, by whether she has sail set. For whether Yosemite was an ocean going steamer or not, it is plain she was a "steamer carrying sail," unless these words mean "a steamer with sail set." It really seems absurd to maintain that a particular steamer when she has sails set should carry one set of lights, and when she furls her sails, should carry another.

If we look into the reasons for the rule, we find it equally applicablo to the case of a steamer with yards upon her foremast and sails bent. To some extent these would certainly obstruct the view of the after light from ahead, and make it impossible to comply with the requirement that the after light show "all around the horizon." The exigency of this argument has driven counsel to maintain that on river steamers the after light is lower than the top of the smoke stack. This is an error in fact. And it is plain that if a light were lower than the top of the smoke stack, it would not comply with the requirement of law that it should show "all around the horizon."

4. Counsel presses the argument *ab inconvenienti*. But this cuts both ways. If his claim is correct, every transatlantic steamer that enters an American harbor at sunset must send down her foremast light, set a bow light, and hoist a globular lantern on her mizzen. Steamers from countries where range lights are unknown must do the same. If this is what the words mean, it is very singular that no ocean navigators ever understood them so.

5. The argument is, that range lights are safer than a masthead light and side lights. This is erroneous. All experience shows the truth of the statement of the inspectors (Record, p. 199), "that in any situation in which two vessels may approach each other in the dark, the colored lights will instantly indicate to both the relative course of each."

Gray, Regulations for Preventing Collisions, 3.

Before the colored lights were introduced, range lights were useful. But now they are unnecessary, and less useful on a river than at sea. In a winding channel the white light will change its bearing as the vessel moves along, especially when thrown out, as on the Hudson, against the dark background of the hills. Whereas, at sea, until the side lights come in sight, it is sometimes difficult to decide whether a masthead light is or is not moving.

6. Counsel quotes on pages 25, 26, Article XXV. of the Act of 1885, and Article XXX. of the Act of 1890, which permit the operation of "a special rule duly made by local authority, relative to the navigation of any harbor, river, or inland navigation." No such article is contained in the Revised Statutes, which were in force at the time of the collision. This was in 1882 (Record, p. 4).

7. Counsel also quotes Section 4235 of the Revised Statutes. But this only refers to the regulation and licensing of pilots, not to the rules of navigation.

So we come back to the original question—what does Section 4233 of the Revised Statutes require?

Third.

The rules of navigation, binding enactments.

Counsel at page 36 says:

"The second assignment of error states a proposition that has never been claimed by the defendant in error." This seems to be an admission that the proposition is untenable. It certainly was held by the trial Judge. The assignments of error at pages 8–13 of the principal brief show this. (See especially the eighth, ninth, eleventh and sixteenth.)

In addition to the authorities cited under the Second Point of the principal brief we refer to.

The Pennsylvania, 19 Wall., 125. At page 135, the Court say:

"The bark had no right to substitute any equivalent for the signal required by the navigation rules. In the case of the Emperor (Holt's Rule of the Road, 38), it was said: 'It is not advisable to allow these important regulations to be satisfied by equivalents, or by anything less than a close and literal adherence to what they prescribe.'"

To the same effect is The Nereus, 23 Fed. Rep., 448.

Fourth.

Vanderbilt's Violation of Rules.

Counsel's brief admits two violations of rules by Vanderbilt which obviously caused the collision.

These should be read with reference to the map at page 200. The squares in this represent minutes of a degree, and those from north to south are consequent a nautical mile long, or 6,080 feet. A minute of longitude in this latitude, is less than a mile.

1. "After he headed on Dinsmore's he observed the high light over his starboard side of his bow, apparently separated from the low lights. He then supposed the two low lights were on vessels at anchor at Dinsmore's, and the high light to be on the land, on a vessel going down the river, or on a vessel at anchor; *was unable to determine if the high light was stationary or in motion, or what it was on.*" (Brief for defendant in error, p. 6.)

The cases cited under the fourth point of the principal brief show that under these circumstances the Vanderbilt was required by statute to slow, which she did not.

2. "The first thing he heard was one whistle. He at once answered with one whistle." (*Ibid.*)

This done the rule required Vanderbilt to go to the right. The signals when exchanged are binding.

The Galileo, 24 Fed. Rep., 386.

See also cases cited, p. 38 principal brief.

This is especially so, when as in this case they correspond with the requirements of the statute. The diagram annexed to defendant's brief shows the two vessels approaching head on or nearly so. There is not a point difference between the two

courses. Each therefore was bound by statute to go to the right.

The Johnson, 9 Wall., 146.
The Maria Martin, 12 Wall., 31.
The Clifton, 14 Fed. Rep., 586.

Fifth.

Yosemite never headed to west of Vanderbilt.

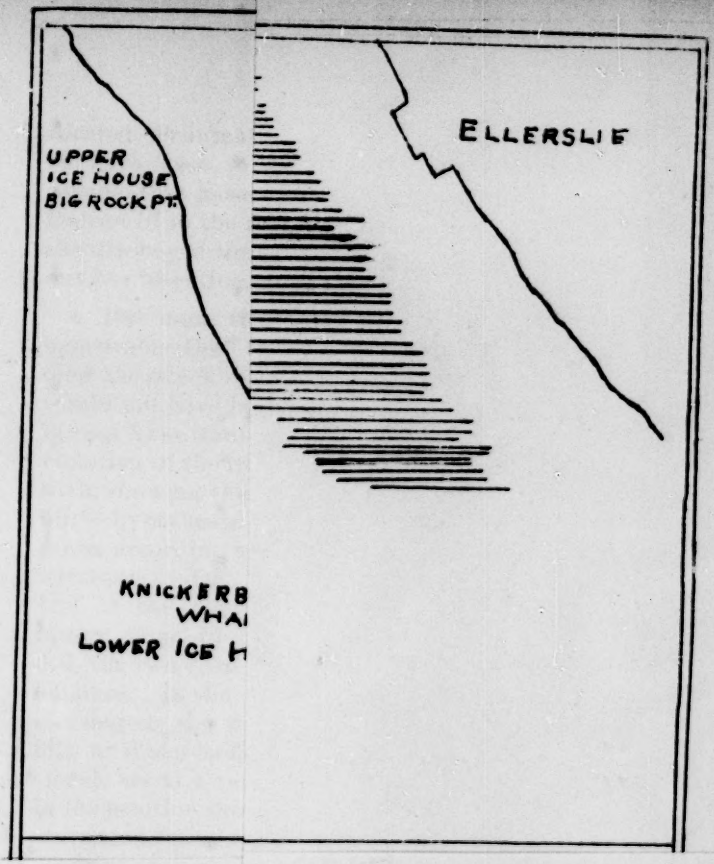
The argument for defendant in error is that the courses of the two vessels continued parallel until they came into the second situation shown on the diagram forming part of the Inspector's Rules (p 196), so that Yosemite was on the starboard side of Vanderbilt, and headed for a point west of her course. This is the only possible situation, of all those shown on the diagrams, in which it was justifiable for Vanderbilt to keep to the left, and if this theory is supported by the evidence, no doubt she may have some color of justification for turning to the left when abreast of the lower ice-house, and heading on Dinsmore's. The objection to the theory is that it has no support in any evidence. Counsel claims in his brief, that Yosemite in going up the river, passed close to Esopus Light, and then headed by compass north two degrees west, on a course parallel to that of Vanderbilt, which was headed south two degrees east. These are precisely the courses shown on the diagrams annexed to the principal brief. On these courses it is plain that Yosemite was to the eastward of Vanderbilt, and on her port bow. It is also admitted that when Vanderbilt reached a point opposite the lower ice-house, she changed her course and headed on

Dinsmore's house on the bluff (p. 42). The position of the two vessels at this time is shown at the point marked B on that diagram. These positions were fixed by locating the place of the collision on the map, according to the evidence, and tracing the two vessels back at the speed testified to by the plaintiff's witnesses. It is obvious that up to this time, the vessels had been in positions of absolute safety. They were on parallel lines, which, if prolonged, would never meet This being conceded by defendant in error, it follows of necessity that the first violation of statute was committed by Vanderbilt in going to the left. To bring the vessels into the position shown on the second diagram that is to say, to put Yosemite on a course to the west of Vanderbilt's it is obvious that at this time she also must have changed her course and headed for the upper ice-house. Of this there is not the slightest evidence.

1. Vanderbilt's witnesses do not testify to it, nor could they, because it was impossible for them to know how Yosemite was headed, except from her side lights, as her hull was not visible, and on this trial they testified that at the time the single whistles were exchanged, they did not see any of the side lights of the Yosemite (p. 34; p. 26; p. 40).

2. Yosemite's witnesses expressly testify that at the time the single whistles were exchanged, the course of Yosemite was directed somewhat more to the eastward, that is to say, she ported her helm, throwing her head more to the right instead of to the left; and therefore away from, instead of towards the upper ice-house (p. 85; p. 114; p. 151).

3. It is admitted by both sides that at this moment Yosemite gave a single whistle. This in-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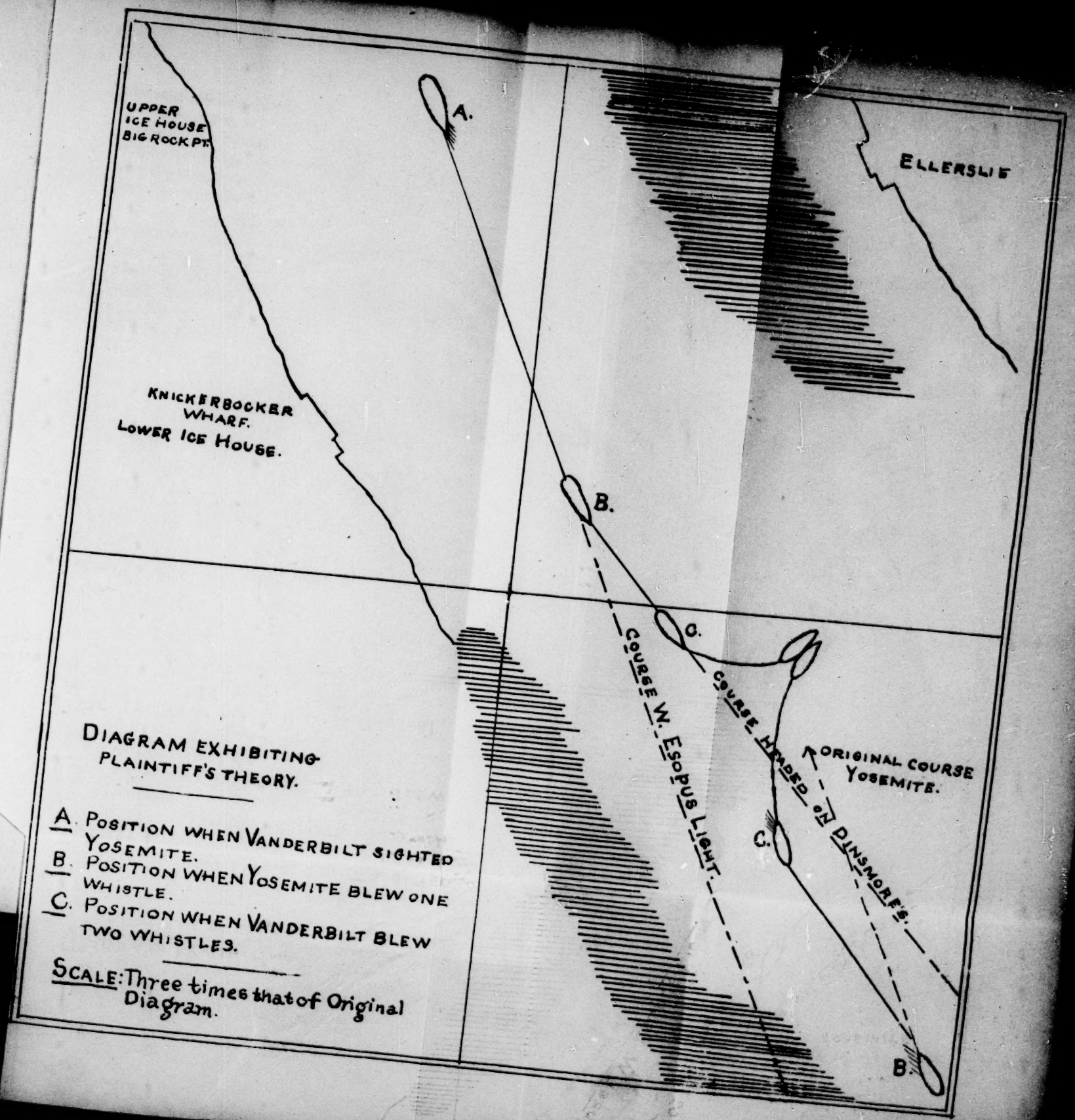

UPPER ICE HOUSE BIG ROCK PT.
A.
ELLERSLIE
KNICKERBOCKER WHARF.
LOWER ICE HOUSE.
B.
C.
COURSE W. ESOPUS LIGHT.
COURSE HELD ON DINSMORE'S.
ORIGINAL COURSE YOSEMITE.
C.
B.
DIAGRAM EXHIBITING PLAINTIFF'S THEORY.
A. POSITION WHEN VANDERBILT SIGHTED YOSEMITE.
B. POSITION WHEN YOSEMITE BLEW ONE WHISTLE.
C. POSITION WHEN VANDERBILT BLEW TWO WHISTLES.
SCALE: Three times that of Original Diagram.

dicated her intention to go to the right, and ought to have been so understood by Vanderbilt. To assume that Yosemite at this time went to the left instead of to the right, is to assume not only that she disobeyed the rule, but that she did not carry out her intention.

4. But more than this, it is mathematically demonstrable that had Yosemite at the moment she blew the one whistle, gone to the left, the collision would not have happened. Her violation of the rule in that case would have neutralized Vanderbilt's violation of the rule. A diagram is submitted herewith, showing the courses of the vessels on Vanderbilt's hypothesis. On this also, the distances are given according to the speed as testified to by her witnesses. On this supposition, if Yosemite had at the point where the two whistles were blown, gone to the right as much as Vanderbilt did, the two vessels would have come out on parallel lines. If she had gone to the right, but in a less degree, she would have gone astern of Vanderbilt, or if she had possibly struck her, would have struck her at a very acute angle. It is impossible, in the position shown on this diagram, which is that contended for by counsel for defendants in error, to produce a collision in the way in which the collision actually happened. This is always the best test of the theory of a collision. Any theory to be reliable must account for conceded facts.

The conceded fact testified to by all the witnesses is that when Vanderbilt changed her course, opposite the lower ice house, she headed on Dinsmore's; but when the two whistles were blown she put her helm hard a-starboard, which threw her head around to port bringing her into a position at or nearly at right angles to her previous course (p. 27; pp. 31, 32; p. 43). If the course of the two vessels had

been parallel after Vanderbilt changed her course and headed on Dinsmore's, and the collision was brought about by Yosemite suddenly taking a sharp sheer to the right, which none of the witnesses testify she did, and which all her witnesses deny, it is obvious that the angle at which the two ships came together, if they came together at all would have been so acute that it would have simply knocked a hole in the side of the Vanderbilt, instead of cutting off her bow. But all the witnesses agree that the Yosemite did actually go through from the right or starboard gangway of the Vanderbilt, to her left or port gangway, and that the latter's bow was actually cut off (p. 27, p. 32, p. 33, pp. 85, 86, p. 155).

That Vanderbilt had changed her course as much are already indicated, is positively sworn to by two witnesses (p. 31; p. 43), and their testimony is uncontradicted.

5. The criticism made by counsel on the diagrams submitted for plaintiff in error is that they show Yosemite headed too far to the eastward. But if the Court will prolong the lines marked as her course from abreast the Esopus Light to the point marked "B," they will see that this line is directed west of the Rhinebeck Bluff, and far enough to the west to go clear of the Swaney Plat (Craig, p. 85; p. 86; Eldridge, p. 115). This is exactly the course testified to by her witnesses, and their testimony in this particular is not contradicted. It is true that the diagram shows that Yosemite headed some what more to the eastward after the single whistle blew. This also is in accordance with the testimony of all her witnesses (Craig. p. 85; Eldridge, p. 119; Belden, p. 151). Manifestly it was the intention of her pilot after the two vessels had passed to get back on his former course so as to clear the Swaney Plat. If at point "B," the Yosemite ha

changed her course so as to be parallel to that on which Vanderbilt was after she changed her course and headed on Dinsmore's, Yosemite would have been headed on the upper ice-house. That she ever headed in that direction there is not the slightest evidence.

6. If Yosemite had, when she reached the point B, been headed on the upper ice-house, Whitaker certainly ought to have seen her green light.

The respondents called two witnesses, Peter Bell and Van Sickle, who saw the green light of the Yosemite on the night of the collision. Peter Bell saw it at a distance of 500 or 600 yards (about one-third of a mile) (p. 47); Van Sickle saw it a distance of about half a mile (p. 57). If Van Sickle could see the light at the distance of half a mile, certainly Whitaker ought to have seen it the same distance if it was turned towards him. But he admits he never saw it at any time, and there is no probability that it was ever turned towards him. In every respect, therefore, in which the case is considered, it must be manifested that the theory of defendant in error is not sustained by any of the evidence in the cause, but that Yosemite did keep to the right, as all her witnesses testify. It follows as a logical and necessary conclusion, therefore, that the cause of the collision was the various faults on the part of Vanderbilt pointed out in the principal brief.

The real difficulty with the brief for defendants in error is, that the exigency of his case requires counsel to repeat in argument the fatal error of his own pilot, to wit: the assumption that when one vessel sees a light on the starboard bow of another, this indicates that they are on parallel courses, and that each will pass on the right side of the other. This may or may not be true. The vessels may be passing that way, or the vessel appearing on the

other's right bow may be crossing from the latter's right to left. To indicate to an approaching vessel which way each is going, the system of colored lights has been adopted. It is admitted that if the two vessels are on parallel courses, which, if continued, would lead each to pass on the right of the other, the green light of each should be visible to the other. But in this case it is conceded that when the vessels were in the positions indicated on the courses first shown on the diagram, neither saw the green light of the other. Even assuming that Yosemite's side lights were dim, and could not be seen from the Vanderbilt, even at the distance of two-thirds of a mile, the duty of Vanderbilt, under such circumstance, is plainly prescribed by the third rule, and that is to stop.

Sixth.

Error in Extremis.

It is argued (p. 20), that Vanderbilt's error was committed *in extremis*, and she is therefore not chargeable with negligence.

I.—"To be an excusable mistake *in extremis*, a pardonable manœuvre, though contributing to or inducing a collision, when the manœuvre would have been faulty if not excusable, it must be one produced by fault or mismanagement in the other vessel."

The Elizabeth Jones, 112 U. S., 514.

II.—Vanderbilt committed at least two faults before the *vessels* were *in extremis*, which were the chief cause of the collision.

1. Being in doubt she did not slow.

2. She did not keep to the right of the channel

This she was bound to do, both from her situation and because by her one whistle she had agreed to keep to the right.

These were plain violations of the Act of Congress and the rules adopted in pursuance thereof. If she had not committed both of them it is plain the collision would not have happened.

III.—The only error that can possibly be claimed to have been *in extremis* was the starboarding. This was inexcusable. Starboarding to a red light on your starboard bow is throwing yourself into danger. If, on the port bow, it is equally perilous. The vessels were not then *in extremis*. Continuing as they were they would have passed port to port, "red to red." To starboard at such a time brought them *in extremis*, and was the immediate cause of collision.

EVERETT P. WHEELER,
Of Counsel for Plaintiff in Error.

OCT 30
JAMES H. McKENNEY,

RECORD, CASE No. 13,947.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No. 66.

WILLIAM BELDEN, PLAINTIFF IN ERROR,

vs.

EMORY A. CHASE AND WILLIAM J. HUGHES, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF WILLIAM DONAHUE, DECEASED, DEFENDANTS IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF.

HALLOCK, JENNINGS & CHASE, ATTORNEYS FOR DEFENDANTS IN ERROR, CATSKILL, GREENE CO., N. Y.

PETER CANTINE OF COUNSEL, SAUGERTIES, ULSTER CO., N. Y.

EMORY A. CHASE OF COUNSEL, CATSKILL, GREENE CO., N, Y.

In the Supreme Court of the United States.

WILLIAM BELDEN, Plaintiff in Error,
against
EMORY A. CHASE AND WILLIAM J. HUGHES, Executors of the last Will and Testament of William Donohue, Deceased.

The above case comes into this Court by a writ of error issued by it to the Court of Appeals, of the State of New York, to review the final determination of the last named Court, wherein a right, privilege or immunity was claimed under a statute of the United States, and under which claim the decision was against such right, privilege or immunity. (Pages 215, 216, 219 and 220.)

The action was brought by the testator of the defendants in error, owner of the steamboat Charlotte Vanderbilt against the plaintiff in error, owner of the yacht Yosemite, to recover the value of the steamboat, in a common law action in the New York State Supreme Court for negligently navigating the yacht, and running down and sinking the steamboat on the waters of the Hudson River, a little north of Esopus meadow light house, and about ninety miles north of New York, at or about 9 30 o'clock P.M., on the 14th day of July, 1882.

Shortly after the action was commenced the testator of the defendants died, leaving a will which was admitted to probate, and letters testamentary duly issued thereon to the defendants in error, who qualified. The action was thereafter revived and continued, and the present defendants in error made parties in place of the testator. (Fols. 2, 14.)

SHORT HISTORY OF CASE IN STATE COURTS.

The action has been tried three times. The first trial at the Ulster Circuit (of the State Supreme Court), before Jus and a jury. A verdict was rendered for the plaintiff in which judgment was entered; also a motion was made for on the minutes of the Court which was denied. An appeal was taken by the plaintiff in error to the General Term of the Supreme Court, from the judgment and order denying a new trial. The judgment and order were reversed and a new trial granted by a divided court. The case is reported in 34 Hun's Reports, 571. Under the practice in the State Court an appeal would not lie from the order without a stipulation that if affirmed, judgment absolute would be given against appellant.

Snebley against Conner, 78 N. Y. R., 218.

The case therefore came back for a new trial at the Circuit, where the Circuit Court followed the law laid down by the General Term, and at the close of the evidence, non-suited the present defendents in error.

This judgment was affirmed *pro forma* by the General Term and reversed by the Court of Appeals. (Reported in 104 N. Y., 86.)

The case then came back for its third trial before Justice Edwards and a jury, at the Ulster Circuit, on the 13th day of June, 1887, (fol. 13.) A verdict was rendered for the present defendants in error, and judgment entered thereon for $27,668.26, damages and costs. (Fol. 12, 278.)

The present plaintiff in error appealed from said judgemnt to the General Term, where the judgment (p. 200–201), was affirmed by the unanimous decision of the Court delivered by Justice Ingalls, reported in 16th New York State Reports, (p. 528), and his opinion is also printed in the record of the case before this Court, (p. 202–207). From the judgment entered upon the affirmance by the General Term, the present plaintiff in error appealed to the Court of Appeals, where the decision of the General Term, and the judgment entered thereon was affirmed. All the Judges concurring without opinion; being content with their former one, except Justice Gray who dissented on a question of contributory negligence, but in no way dissented from the other members of the Court on the construction of the Statute, as to the lights the yacht should have carried. See report of the case in Court of Appeals in 27th New York State Reports, (p. 688), where it shows all were for affirmance except Gray, and where his dissenting opinion is given. A memorandum of the decision is also given in 117th New York Reports (Court of Appeals), (p. 637.) (See Fol. 307, page 210 of the Record in this Court), and at end of dissenting opinion on page 215, that no prevailing opinion was given, and for dissenting opinion (p. 210–215).

To review the decision of the Court of Appeals, the case comes into this Court by writ of error.

POINTS.

I.

Questions of Fact not reviewable in this Court.

All questions of fact upon which conflicting evidence was given, was settled by the verdict of the jury in favor of the defendants in error, and will not be reviewed in this Court. (Sec. 1011, Revised Statutes of U. S.)

The only way to obtain a new trial in cases tried before a jury where the jury have rendered a verdict, under the laws and rules of practice in the State of New York, is by a motion, made either on the minutes of the Court before whom the trial was had, or on a motion made on a case at a Special Term of the Court for a new trial.

Where a new trial on any such motion is denied, an appeal can be taken to the General Term of the Supreme Court, and if the order appealed from is denied, that is final, so far as the facts are concerned. (Sections 999, 1000 and 1337,) Code of Civil Procedure, New York State.

A motion for a new trial was made on the minutes of the Court, and the motion was denied. The order is printed on page 11, of the Record in this case. An appeal from both the judgment and

this order was taken to the General Term, where the order denying the motion for a new trial as well as the judgment, were both affirmed. (Pages 200 and 201, of the Record.)

The opinion of the General Term, delivered by Judge Ingalls, pages 202–207, shows that the Court carefully examined the facts and held that the verdict of the jury was neither against the evidence nor against the weight of the evidence.

II.

Questions settled by the pleadings, and questions of fact which were dependent upon conflicting evidence, settled by the verdict of the jury.

FIRST.—The ownership by the testator of the defendants in error of the steamboat "Charlotte Vanderbilt," and that she was a total loss by reason of the collision, was admitted on the trial. (Pages 9 and 10 of Record.)

THE VANDERBILT'S MARINE PAPERS.

Her enrollment, license and inspection as a vessel engaged in domestic commerce under the Laws of the United States, were proved by documentary evidence. Her route authorized to be run by her inspection was the Hudson River between Albany and New York, landing at intermediate points, or on any inland route. (See page 199 of the Record.)

Among the particulars of inspection are enumerated:

"Watchman? 1."

"Has signal lights? Yes."

Which said enrollment, license and inspection of the "Charlotte Vanderbilt" are in due form as required by law. (Pages 10 and 199 of Record.)

THE YACHT'S MARINE PAPERS.

The plaintiff in error's vessel, "The Yosemite," is licensed, enrolled and inspected as a yacht under the Laws of the United States. Her license describes her as a yacht used and employed exclusively as a pleasure vessel, and designated as a model of naval architecture, shall not carry passengers or transport merchandise for pay, etc., and licensed "to proceed from port to port in the United States, and by sea to foreign ports." (Pages 10–15 of Record.)

Her certificate of inspection certifies, among other thing: "The said vessel is permitted to navigate for one year the waters of any ocean route between and touching at intermediate ports a distance of about miles and return."

"Watchmen? 1."

"Signal lights? Yes."

(Pages 13 and 14.)

And has a certificate subjoined to her inspection certificate, that the form was adopted by the Board of Supervising Inspectors, at the annual meeting held in January, 1880. Subscribed by James A. Dumont, Supervising Inspector General.

Approved February 13, 1880, by John Sherman, Secretary of the Treasury.

Her inspection was under Section 4426 of Revised Statutes of the United States, page 858.

Her enrollment was made under Section 4319 of the Revised Statutes of the United States, and certifies: "That the said vessel has two masts, that her length is 182 feet, her breadth 23.8 feet, her depth 18.7 feet, that she measures 481.50 tons, and her total capacity is 487.51 tons. (Page 11.)

The plaintiff in error admitted by the pleadings that he was the sole owner of the yacht, and was on board of her at the time of the collision; that she was so constructed that she could be propelled by either the power of steam or sails, or by both, and that at the time of the collision her sails were furled, and was propelled wholly by the power of steam. (Div. 2, complaint, p. 4, Div. 2 of answer, p. 6.)

EVIDENCE AS TO SITUATION OF YACHT'S SAILS.

Pilot Craig, of the yacht, says she had a sail on the yard across the foremast, folded up and lashed on the yard, in a space, say, four feet long, and the whole being the size of a barrel. There was a sail to a gaff, running from the foremast, and this sail was rolled up and tied tight against the after side of the foremast. There was also a jib forward, that was rolled up and laid on the deck inside and below the top of the rail at the bow of the boat.

He is not certain that there was any sail on the aftermast; but if there was one, that it was also rolled up and tightly tied to the after part of that mast.

The sails were not unfurled or put up on the trip. (Fol. 167, 168.) That the yacht never had her sails up when running on rivers, and scarcely ever had them up when running on the ocean, and only then occasionally, to keep her from rolling. They occasionally were spread to dry them. Her sails had not been spread within a week, and probably longer. (Fol. 140, 141.) It was also proved by a pilot on this yacht, subsequent to the collision, and who had frequently seen the yacht running for several years before the collision, that he had never seen her running with her sails up. (Page 64, of Record.)

THE VOYAGE.

Captain Eldridge said he left City Island, 18 miles from New York, at about the east end of the East River, between 9 and 10 o'clock in the forenoon, ran to New York, cast anchor and laid there until at least half past three o'clock and probably as late as four, then left for Catskill. (Fols. 121, 167.)

The collision took place—admitted by the pleadings—between nine and ten o'clock in the evening. (Div. 5 of Complaint, Div. 5 of Ans., p. 4, 6.)

The evidence shows the collision took place probably as early as half past nine; stopped on the way before dark debating whether they would cast anchor and lay over until morning. Lost fifteen or twenty minutes, then concluded to go on, and would arrive in Catskill about 11 o'clock P. M. (Fol. 210.) Was opposite Newburgh at sunset. (Fol. 135.)

After the delay caused by the collision, continued the voyage to Catskill, arriving there cast anchor and got in hotel on shore at five

minutes before twelve o'clock, midnight. (80.) Hence the entire voyage was within the State of New York. The foregoing evidence is uncontradicted.

The questions settled by the verdict on conflicting evidence will now be examined, and referred to, and will show that the steamboat was navigated in conformity to the statutes and rules, and that the navigation of the yacht was in violation of them, and produced the collision, without taking into consideration the negligence of the yacht in carrying the white foremast-head light.

SECOND.—COURSES RAN BY THE VESSELS IN APPROACHING EACH OTHER.

Pilot Whitaker, of the steamboat, ran down the middle of the channel, between Rhinebeck and the Rondout light headed on "Big Rock" Point, on the map, the place where the upper ice house stands, or a little north of it, on the west side of the river, until nearly opposite to it, then changed his course heading a little west of the Esopus Meadow light; continued on that course until about half way between the upper ice house and the lower ice house which stands at a point on the map marked "Knickerbocker Wharf," then changed the course, and headed on Dinsmore's house standing a little back from the shore on the east side of the river, and at the elbow where it turns to the west. These changes of course were made by a gradual swing. The last named course, by the compass, is two points east of south. In running up the river, after rounding the Esopus Meadow light, from about the center of the channel, you will head on the shore at about the point marked "Port Ewen." The compass course is two degrees west of north. (Fols. 35-36, 42-43.) Captain Craig, of the yacht, swears he ran up the river on a course of two degrees west of north; did not use the compass. That the compass is not used in running the Hudson River at night; the channel is too narrow, and the courses are too short to use the compass. Craig also swore that he knew the compass course in running down the river from the time you head on Dinsmore's house, and that course is two degrees east of south. (Fols. 147, 148-149, 143-144.)

The foregoing headlands to be observed and courses to be run down the river were proved to be correct by other witnesses of the plaintiff in error, Allen G. Gage and James Moon, (Fols. 111, 237-238,) and run these lines in about the center of the channel.

Some of the witnesses speak of being headed east when headed on Dinsmore's house. This is an error, as will be seen from the maps, in connection with the course, being two degrees east of south.

This point is on the east side of the river, and it is in reference to this point that witnesses speak of being headed on the east shore, not intending to be understood as heading on the east shore, at any point north of Dinsmore's house.

THIRD.—VESSELS WERE IN THE SECOND SITUATION.

From the time Craig rounded the Esopus light, until just a moment before the collision, from his own evidence, he was running on this course of two degrees west of north, and Pilot Whitaker, from the time he changed his course, about midway between the two ice

houses, was headed on Dinsmore's; was running on a course of two degrees east of south. (Fols. 147-149, 143, 144, 111, 237, 238, 35, 36, 42, 43.)

The Court will see these are parallel lines. But from the evidence, were not far apart, were near the center of the channel, but probably a little west of it.

On the trial, and since then, one of the principal questions of fact has been, which vessel, while running on these parallel courses, was farthest west in the river?

The defendants in error contending that the yacht was, and the plaintiff in error contending the reverse.

Pilot Craig fixes the steamboat's line a little west of the middle of the channel, and the yacht's a little east and the place of the collision about in the middle of the channel, probably a trifle east (149, 150.)

Pilot Whitaker narrates what took place after the vessels got in the second situation, in the following order:

That he first saw this high light and two low lights, apparently astern of the high light, when he was between the two ice houses. He at first supposed the high light was on a steamboat, with a tow astern to a hawser—that the high light at the distance was supposed by him (it being a very dark night), to be the two vertical lights on the stern of the towing vessel blended in one, and the two low lights to be on canal boats in the tow astern of the towing vessel. After he headed on Dinsmore's he observed the high light over his starboard side of his bow, apparently separated from the low lights. (Fols. 36, 37.) He then supposed the two low lights were on small vessels at anchor at Dinsmore's, and the high light to be on the land, on a steamboat going down the river, or on a vessel at anchor; was unable to determine if the high light was stationary or in motion, or what it was on. To more certainly determine the matter he took night glasses, (opera glasses), to aid his vision and looked all about this high light to see if it was on a vessel and also if he could observe any colored or other lights, and could not see any, or anything else to aid him in determining what the light was on, but it appeared more west in the river, and a considerable distance further down the river.

The first thing he heard was one whistle. He at once answered that with one whistle. As soon as he had given the answering whistle, the yacht had then approached so near to him he could see over the starboard bow of his vessel the glimmer of the outline of a vessel approaching him very fast, but could not then tell if headed on him or not. The night was very dark and the yacht turned out to be black. This high light was on a vessel approaching him, and so near that he could not sheer to the right and pass the vessel without a collision. He at once gave two whistles, which at once were answered from the yacht with two whistles.

At the instant of time the yacht answered with two whistles, the red light (which then appeared to be a dim one) came in view, which was the first and only colored light that he had been able, up to that time, to see on the yacht. He immediately turned his wheel hard

a starboard, and thereby sheered his vessel to the left. (Fols. 39, 51.) The yacht sheered to the east (the same direction the steamboat had sheered) and apparently came faster easterly than the steamboat went, showing up her bulls-eye lights on her port side. He immediately gave his engineer four bells, which was a direction to slow, stop and back at full speed, which bells were immediately obeyed. The steamboat had got between three and four revolutions back, and her headway in the water was substantially overcome, when the yacht struck his starboard near the front gangway, just forward of the pilot house, ran through her and cut her bow off, from which the steamboat immediately sank head first, leaving the after part of her upper deck and covering over it (hurricane deck), at the stern, out of water.

Had been watching for colored lights, and if properly set or not obscured would have seen them. If the yacht had been west of him in the river would have seen the green one, if east would have seen the red, and if coming head on would have seen both, but could see none until the red light came in view as above stated. (Fol. 38.) The entire time from hearing the first whistle from the yacht to the time of the collision was but a few seconds, and all the whistles were given and answered, and the bells to the engineer and his reversing the wheels of the steamboat and backing, were done as quick as it was possible to do it. The yacht at all times, until after she took the rank sheer to cross the bow of the steamboat, was west of the steamboat in the channel of the river. The speed of the yacht was never diminished, and from the speed and sheering to the east by the yacht made it evident to the pilot of the steamboat that the pilot on the yacht had thrown her wheel in the pilot house in the wrong direction, that is, sheering his vessel to the east instead of to the west. (Fols. 35-45, 49-53.) The evidence of pilot Whitaker is fully confirmed by the lookout, Edward Post, who was, at the time, in the pilot house, with the window open—shoved down. (58-63, 66.) He is certain the red light (a dim one) on the yacht did not show until after the yacht had answered the two whistles of the steamboat. That he had been watching for lights, and that at no time did the green light of the yacht come in view to the steamboat. (59, 64.)

The pilot and lookout on the steamboat, after heading on Dinsmore's, could tell with certainty which vessel was farthest west, the course of the steamboat was straight down the channel of the river with the flag staff on her bow directly in front of them, with the Esopus light south of them, and somewhat to the west of the course on which he was running, could see on which side, either to the east or to the west, this high light was.

James H. Dady, the engineer on the steamboat, confirmed the captain as to the whistles given, and immediately got the four bells, and his engine made from three to four revolutions backward before the collision came. (Fols. 71, 71-76.)

Charles Swift, the mate on the Vanderbilt (fol. 76), who was near the engine-room, confirms the pilot as to the whistles and bells given

as soon as they could be, that the wheels were reversed and then the collision came. (Fols. 76–80.)

John Slattery, the porter on the steamboat, was also near the engine-room, and confirms the pilot and engineer as to the whistles and bells, and the rapidity with which they were given. (Fols. 55–58.)

FOURTH.—LIGHTS ON THE STEAMBOAT.

The pleadings admit that the steamboat had regulation lights, lighted and brightly burning. (Div. 4 of complaint, fol. 5, Div. 5 of answer, fol. 9.)

These regulation lights consist of a white light at the bow, a white light on the flag staff aft, at least 15 feet above the bow light, a green light on her starboard side, and a red light on her port side, as required by Rule 7, of Section 4233 of Revised Statutes of United States, and also as required by Inspectors' Rules.

Mr. Belden in looking up the river in line with the Esopus light, saw the central range lights on the steamboat a long distance off headed on the west shore.

The steamboat was so far off—estimated two and one-half miles—the red light could not then be seen.

When the yacht had rounded the Esopus light, east of and abreast of the light in the middle of the channel, the red light of the steamboat came in view.

Immediately after the lookout of the yacht announced the lights of an approaching steamer, the pilot of the yacht then gave one whistle, which was not answered. (Fol. 217.)

The vessels as shown by the maps were then at least a mile and a half apart, if not more. (See map Ex. "A" after page 200 of the Record.)

FIFTH.—THE HIGH LIGHT ON THE YACHT.

The complaint alleges that the yacht had a foremast head white light, and that she did not have the lights required by law.

The answer admits she had this mast head light, but denies she did not have the lights required by law. (See 7 and 8 of Com., 5 and 6. Div. of Ans. 7 and 8, Fol. 9.)

The proof shows this light was 54 feet above the deck, (Fol. 162,) and was the foremast head light required by rule 3 of Sec. 4,233.

The defendants in error proved by the pilot and lookout of the "Vanderbilt," as well as by six other pilots and lookouts, that this high light was unknown and not used in navigating the Hudson River. (Fols. 36–38, 79–82, 22–27 82–85, 87,, 235, 236, 238.)

They each swore if they saw such a light, they would be unable to state whether it was on a vessel or on shore.

If on a vessel would take it to be the aft light of the central range lights of a vessel sailing in the same direction if she did not show either a bow or colored light, or that it was on a vessel at anchor.

The appellant in error gave evidence by several witnesses that they were well acquainted with this high light, but on cross-examination, were shown to know it from sailing on the ocean, and had scarcely ever seen it on the Hudson River.

SIXTH.—COLORED LIGHTS ON THE YACHT.

The complaint alleges that the colored lights were set only a foot above the rail; were not properly set; were not such lights as were required by law, etc.

The answer admits that they were set only about a foot above the rail, and denies the balance of the allegations as to lights. (See Div. VII and VIII of Complaint. Div. VII and VIII of Answer. Fols. 5, 6 and 9).

Pilot Whitaker and his lookout, as we have shown under fourth sub-division of this point, had been watching for colored lights on the yacht, could see none, (except the red light a moment before the collision) and if she had had a green light on her starboard side properly set and not obscured, he would have seen it. If the yacht had been further east in the channel of the river, with a red light properly set, and not obscured, he would have seen it, or if she had approached him, head on or nearly so, if properly set, and not obscured, he would have seen both her colored lights. (Fols. 38, 39 and 51, 59, 60 and 65.)

The pilot of the steamboat is confirmed by pilots on other steamboats that the colored lights on the yacht would not show ahead.

The defendants in error proved, by James Mulligan, pilot of a propeller, (fols. 29-33), Peter E. Bell, pilot of a propeller, (fols. 68, 69, 70), Fred. Bell, pilot of the "Saratoga," (fols. 22, 23, 24), Theodore VanSickle, a pilot, (fols. 82, 83), that they met, with their respective steamboats, on the night of the collision, this yacht.

One of them had met the yacht a little below the place of collision. The other two a considerable distance above. They explained the difficulties they experienced on meeting her, and all unite in saying that her colored lights did not show ahead, gave as a reason that they were set too low, or otherwise improperly set, so they would not show ahead, or were obstructed; could only see them when they got nearly abreast of the yacht, and they then appeared not to be such bright lights as would show the distance required by law.

The diagrams, part of the Inspectors' rules, and their instructions accompaning the same—pages 192-200, of the Record—show the colored lights are not signal lights if not set so that they will show, as required by the rule.

The reason is apparent these colored lights are to show if the approaching vessel is coming toward another vessel, head on or to the right or left of her.

If they do not show ahead, they are of no use whatever to aid in navigation.

While several witnesses on the yacht on the night of the collision swore her colored lights were good bright lights, none of them swore they had ever seen her lights from ahead of the yacht when they were off her, hence their evidence is not in contradiction of our evidence.

The key that unlocks and shows why the colored lights did not show ahead was shown by Belden, the owner of the yacht.

The width of the yacht was only 23.8 feet, as shown by her enrollment, therefore she would be only 11.9 feet from her center line to the outside of the rail, requiring but a short distance for the taper of

her bow. The length of the yacht is 182 feet, her depth 18.7 feet. (Fol. 17.)

That the yacht had a heavy sheer, was much higher at her bow and stern than in the middle.

From the place where her lights were set on the rail to her bow, being considerably higher than where the lights were set, would give such an incline upwards that these colored lights could not show ahead. (Fol. 231, 232.)

SEVENTH.—THE SPEED OF THE VESSELS.

The speed of the yacht was about 16 miles an hour, and is a propeller. The speed appears from the distance she ran and the time within which she ran it. From New York to the place of collision is 95 miles. (Fols, 122, 193.) The collision took place between 9 and 10 P. M. admitted by the pleadings. (Div. 5 of Com., Div. 5 of Answer, pages 5-6.) Her speed being about the same the whole distance, except a delay of from fifteen to twenty minutes by slowing down when debating whether they would lay up at Poughkeepsie over night, and the loss of time by reason of collision. (Fols. 133, 134, 259.) And also by the distance and time of running from the place of collision to Catskill, and arriving at Catskill a little before 12 o'clock. (Fols. 28, 80, 210.) And also from a pilot who had run the vessel, that she could run twenty knots an hour. (Fol. 93.) The speed and time of collision is also shown by the time the steamboat left Catskill to be at 7 to 7:10 P. M. (Fols. 76, 58.) The speed of the steamboat, ten miles an hour with ebb tide and nine miles against flood tide, and that she struck flood tide at about Barrytown. (Fols. 72, 35.)

The distance from Catskill to the place of collision being about thirty miles. (Fol. 122.)

The combined speed of the approaching vessels—twenty-five miles an hour—makes them approach each second 36 66-100 feet, of which the yacht approached 23 46-100 feet per second, and the steamboat 13 20-100 feet.

EIGHTH.—THE VESSELS WERE NOT IN THE THIRD SITUATION. THE TESTIMONY OF THE WITNESSES OF THE PLAINTIFF IN ERROR COULD NOT HAVE BEEN BELIEVED BY THE JURY.

Pilot Craig, in order to convince the jury and court, swore that from the time he rounded the Esopus light, the red light of the steamboat was always in his view; that this red light came to his view just before the lookout announced the approach of the steamer, and just before the first whistle was given. He estimates the vessels then more than a mile apart. (Fol. 124.)

Belden fixes this place abreast of the light house, and estimates the distance over two miles. (Fol. 217.)

Craig claims from then until after all the whistles were given and answered, the steamboat was west of him in the river. (Fols. 123, 124, 128, 148, 149, 158.) That he could see the steamboat's red light the whole time, and says, "My red light was in his view."

If this evidence was true, it would put the vessels in the third situation, shown by the diagram on page 196 of the Record.

He says, in this situation each vessel was in safety, if the courses were continued; that he continued his course, and if the steamboat had done the same, the vessels would have passed safely some two or three hundred feet apart. (Fols. 126, 142, 143.)

Belden, Eldridge, and Haines, (a guest on the yacht,) confirm the evidence of Craig.

They all, however, swear that when they first saw the steamboat's red light she was headed on the upper ice house on the west shore; that they had not observed her change her course until about the instant of the collision. (Fols. 124, 145, 150, 227.

How could the steamboat have got headed on Dinsmore's house and got to the place of collision in the middle of the channel if she had not changed her course?

If she had not changed she would have run aground on the west bank of the river, instead of being where the yacht could run her down.

By drawing a line, or laying a rule on the map, will demonstrate that the course which Craig swears he run to clear the Swaney Plat, the mud flat opposite Ellerslie's, you must head at about Port Ewen on the west shore.

In charity we may say they, for a moment or two, had failed to have their attention kept on the steamboat, and, during this time, she had made her change and brought her green light in view, and they had not noticed it. If we do not take this view of the case, then we are forced to the conclusion that they testified to exculpate themselves and the yacht.

Craig was sworn before the steamboat inspectors a few days after the collision, and then swore that the steamboat gave him two whistles when within about five or six hundred feet of her and changed her course to go to the east. "When we were within five hundred or six hundred feet of each other, I should judge the 'Vanderbilt' took a rank sheer right across our bow and showed us her green light. He blowed two whistles." (Fols. 142 and 143.)

On this trial, he swore the two whistles, the green light coming in view, and the collision, were all about simultaneous, and he denied he had sworn before the inspectors as his evidence there showed. (Fol. 124, 146.)

He also swore before the inspectors that about five or six minutes after he blew the first whistle he blew the second whistle. In about a week after he so swore he went back to change this time, to one and one-half minutes, and on this trial said in six or eight seconds after he blew the first whistle he blew the second, and from thirty to forty seconds after that blew the two whistles, and with blowing these two whistles came the crash of the collision. (Fols. 123, 124, 125, 126, 146.)

Belden was still more inconsistent and untruthful. He swore the steamboat had got down abreast of the yacht and west of her about 200 feet, and if she had not changed her course, would have passed under the yacht's stern in a couple of seconds; then changed her course, and the steamboat was thrown across the bow of the yacht, at the instant of collision. (Fols. 218, 219, 227, 228, 229.) The

yacht, the speediest vessel and quick to mind her helm, could do nothing to avoid it.

Haines, another witness for the yacht, who swore he had seen the steamer's red light at the time of the collision; swore he was seated behind the social hall near the stern of the yacht, and on the middle of the vessel, from side to side; that he could not see over the social hall nor up the river from where he sat, unless his eyes are such that he could see around the corner of the social hall, and not be at it. (Fols. 197–203.)

All he saw was when he jumped up, and that is shown by Mrs. Belden's evidence to be when the steamboat was directly in front of the bow of the yacht, and at the instant of collision. Mrs. Belden saw no lights. The only other witness on the yacht who saw the steamboat's lights was Alfred Johnson, the lookout. He swore he saw all the lights, white, red and green, reported them, and thinks the vessels then a mile apart, and continued to see all these lights until the steamboat answered the second single whistle of the yacht. She then shut out her green light, then blew two whistles, shut out her red and showed her green light. (Fols. 115, 117, 118, 119.) This evidence is in direct conflict with all the other evidence of witnesses who were on the yacht. John Minyard, the pilot who had piloted the yacht from City Island to New York, from pilot Craig's evidence, was also on the lookout at the same time. He exclaimed, just before the collision, that there would be one, but who was not sworn by the defendant on either trial, probably for the reason that his testimony would have been adverse to the defendant. We have called the attention of the Court to every witness on the yacht who swore as to lights.

NINTH.—WHISTLES.

The first single whistle claimed to have been given by the yacht, is shown by Belden to have been given at about the middle of the channel, opposite and abreast of the lighthouse. (Fol. 217.)

Pilot Craig fixes this place, at first, a half mile above the light house. On cross-examination, changes it to a quarter of a mile. (Fols. 123, 145.)

This whistle was given too early to be a signal to the steamboat.

It was not heard on the steamboat; the vessels were too far distant apart, and a strong north wind was blowing to enable it to be heard on the steamboat. (Fol. 38.)

There is no dispute in the evidence, but that all the other whistles were given, answered and heard on each vessel. Some of the witnesses on the yacht differing on the number of seconds the whistles were apart, and the proximity of the vessels when given.

The yacht, when she gave the single whistle which was heard on the steamboat, was given too late to enable it to be complied with. The rule says, when the vessels have arrived at a distance of a half mile apart, if they have not been heard, understood and complied with, they must slow, stop and back.

It is clear upon the evidence that when this single whistle was given, the vessels were much less than a half mile apart, and, in all probability, not over a quarter of a mile apart.

The evidence of all the witnesses on the part of the steamboat shows that the several acts of giving and answering whistles, giving bells to the engineer, his complying with them, and the pilot starboarding his helm, were all done as quickly as it was possible to do these several acts, knowing that safety depended upon expedition.

TENTH.—TIME ASCERTAINED FROM HEARING FIRST WHISTLE UNTIL COLLISION.

In the darkness, a light not known to exist in a particular place is difficult to be determined whether it is moving toward or from one. But these difficulties do not prevent determining whether it is directly in front or on which side it is.

This proof of the engineer shows that it takes four seconds for the revolution of the wheel, making from twelve to sixteen seconds consumed in backing, with a second or two added for the time of the engineer to unhook his engine and start her on the reverse. (Fol. 74.) We claim from sixteen to twenty seconds covers the time between giving the bells to the engineer to reverse, and the collision. Now take the time for the whistles; these whistles could be given and answered as quickly as the following conversation could take place. The pilot of the yacht says to the pilot of the steamboat, "I ask to pass to the right;" is answered, "I consent." Then the pilot of the steamboat changes his mind and says, "I ask to go to the left," by giving two whistles, is answered from the yacht by two whistles, "yes." The Court can take its watch and see how long it will take to have this conversation. It will not exceed ten seconds. We therefore say by these tests, much more reliable than guesses of witness, that the whole time from the giving of the first whistle until the collision, was not to exceed from 34 to 40 seconds, which allows a liberal margin of time between the whistles. In the case of the "Nereus," 23rd Fed. R., 448, in Opin. 453, where it became necessary to determine theusual time of giving a whistle before United States District Judge Brown,—and before whom many like trials have made him conversant with the time required to give whistles states the usual time of a whistle is a second; add a second intervening between the whistles, that would require twelve seconds for giving and answering the single whistle and the two whistles. From the time the steamboat reversed, her speed diminished. Taking that into consideration, the vessels could not have been more than 1260 feet apart when the first whistle was given, and about 600 feet apart when the bells were given to the engineer of the steamboat.

ELEVENTH.—IT WAS GROSS NEGLIGENCE ON THE PART OF THE PILOT OF THE YACHT TO NOT SLOW, STOP, AND BACK, BUT TO CONTINUE AT FULL SPEED AND RUN DOWN THE STEAMBOAT.

Rules 3 and 6, of the Inspectors' Rules, say that when a vessel has approached within a half mile of each other, and the signals have been given, or answered, erronously, or not understood, each vessel shall slow, etc. (Rule III, P. 193 of the Record, and Rule 18 of Sec. 4233, of R. S.)

The yacht was an easy steering vessel, quick to mind her helm (93, 152); at sixteen miles an hour could be stopped dead in the water

in from 300 to 400 feet, and in two or three seconds could change her course as much as two points. (93.)

Another witness says she can be stopped dead in the water in 400 feet at a speed of twelve miles.

The yacht ran through the steamboat at full speed. (Fols. 147, 260.)

The yacht's engineer swore she had not reversed when the collision occurred. (Fols. 259, 260.)

The yacht was bound to slow, stop and back, not only under the 3d Pilot Rule, but under Rule 21, of Sec. 4233, R. S.

TWELFTH.—THE LACK OF EXPERIENCE AND INCOMPETENCY OF PILOT CRAIG AS A PILOT ON THE YACHT CAUSED THE COLLISION.

The pleadings admit that the yacht was rigged with a steering wheel, roved ocean fashion, so that she was steered in the same direction that her wheel was turned. (Div. 6 of Comp., Div. 6 of Ans., pp. 5-7.)

The pilot of the yacht, with 35 years of experience on side-wheel towing steamboats, running four miles an hour, with steering wheels rigged the reverse of the wheel on this propeller yacht (Fols. 132, 133, 138, 139, 154), only a few hours before having been put on her, running sixteen miles an hour, found himself, by miscalculation of speed, almost against the steamboat, before he was aware of approaching danger. In the fright from an impending collision and a fear that a passenger steamboat was likely to be sunk, with probably a great loss of life, he turned the wheel in the direction he had done by his former 35 years experience, which proved to be the wrong direction to turn the wheel on this boat, and instead of avoiding the collision, the mistake produced it. He so far failed to bring to mind the difference in the wheel on the boat from the ones he had been used to handle; that he swore before the steamboat inspectors the same as if this wheel was like those he had used; several days subsequently asked to make a correction. (Fols. 142, 143, 154, 157, 158, 260.) And on this trial was so confused between the two kinds of wheels that his mind involuntarily run to the kind he had formerly used. Pilot Craig was teaching Captain Eldridge the geography of the shores instead of attending to his duty, and people were running in and out of the pilot house. (Fol. 216.)

The defendants in error claim that the following questions of fact were settled by the verdict of the jury:

FIRST. That the first whistle given by the yacht was given when the vessels were too far apart against a strong north wind, which prevented it from being heard on the steamboat.

SECOND. The second single whistle was given from the yacht too late, and when the vessels were not at the outside more than 1500 feet apart, which did not give sufficient time to agree upon and allow the vessels to make their final movements and pass in safety.

THIRD. That the yacht's colored lights were improperly set, or were in some manner obscured so that they would not show ahead, could not be and were not seen on the steamboat. The green light was never seen on the steamboat, and the red light was not seen until

the moment of the collision, and probably too late to avoid it, even if both vessels then had done all things possible to prevent a collision.

FOURTH. The yacht did not slow, stop or reverse; her engineer did not receive the bells to do so until the yacht struck the steamboat. The speed of the yacht was about sixteen miles an hour, and that of the steamboat about nine.

FIFTH. The night was very dark; the yacht was black, and could not be discovered from the steamboat until the time the single whistle was being answered by the steamboat, and then only her outline could be discovered approaching very fast and not distinctively enough to determine how she was headed.

SIXTH. That the two whistles were given by the steamboat and answered from the yacht immediately after discovering the form of the approaching vessel.

SEVENTH. That immediately after the two whistles were given and answered the red light of the yacht (which was a dim one) first came in view and was immediately followed by the light showing from the cabin windows of the yacht port side (bull's eye glasses).

EIGHTH. The pilot of the steamboat, immediately after giving the two whistles, threw and kept his wheel hard a starboard.

NINTH. The pilot of the steamboat, instantly on starboarding, gave four bells to his engineer to slow, stop and reverse, which were at once obeyed and had obtained between three and four revolutions of the wheel reversed when the collision came.

TENTH. From the time the pilot discovered the form of the vessel, which proved to be the yacht, the yacht appeared to sheer and come to the eastward under a port helm, which led the pilot of the steamboat to believe that the yacht had thrown her wheel in the wrong direction.

ELEVENTH. That all the movements made on the steamboat were done to avoid a collision, as fast as it was possible to do them; the yacht, by her colored lights not showing ahead, and having given her whistle so late, did not give the pilot of the steamboat sufficient time to do more than he did do, to avoid the collision.

TWELFTH. The yacht should have given two whistles instead of one.

THIRTEENTH. Pilot Craig, on the yacht, was incompetent to navigate and pilot the yacht for want of experience in piloting a propeller of such speed and with a wheel roved ocean fashion, never having been on this yacht until this trip, and for many years been engaged in piloting steamboats of much slower speed and with wheels roved the reverse of the one on the yacht.

FOURTEENTH. That those engaged in navigating the steamboat were not guilty of negligence or any lack of care, and the collision was not the result of any negligence from those navigating the steamboat.

FIFTEENTH. That those navigating the steamboat were not guilty of or did not do any act or acts of negligence, which contributed to produce the collision.

SIXTEENTH. That the collision and loss were occasioned solely by the negligence of the persons navigating the yacht.

Also all other questions depending on conflicting evidence.

III.

For convenience we have printed the principle statutes, which will necessarily be required to be examined by the Court.

NAVIGATION.

SEC. 4233. The following rules for preventing collisions on the water, shall be followed in the navigation of vessels of the Navy and of the mercantile marine of the United States :

STEAM AND SAIL VESSELS.

RULE 1. Every steam vessel which is under sail and not under steam, shall be considered a sail vessel; and every steam vessel which is under steam, whether under sail or not, shall be considered a steam vessel.

LIGHTS.

RULE 2. The lights mentioned in the following rules, and no others, shall be carried in all weathers, between sunset and sunrise.

RULE 3. All ocean-going steamers and steamers carrying sail, shall, when under way, carry—

(A.) At the foremast-head, a bright white light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side.

(B.) On the starboard side, a green light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

(C.) On the port side, a red light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side.

The green and red light shall be fitted with inboard screens, projecting at least three feet forward from the lights, so as to prevent them from being seen across the bow.

RULE 4. Steam vessels, when towing other vessels, shall carry two bright white mast-head lights vertically, in addition to their side

lights, so as to distinguish them from other steam vessels. Each of these mast-head lights shall be of the same character and construction as the mast-head lights prescribed by Rule 3.

RULE 5. All steam vessels, other than ocean-going steamers and steamers carrying sail, shall, when under way, carry on the starboard and port sides, lights of the same character and construction and in the same position as are prescribed for side lights by Rule 3, except in the case provided in Rule 6.

RULE 6. River steamers navigating waters flowing into the Gulf of Mexico, and their tributaries, shall carry the following lights, namely: One red light on the outboard side of the port smoke pipe, and one green light on the outboard side of the starboard smoke pipe. Such lights shall show both forward and abeam on their respective sides.

RULE 7. All coasting steam vessels, and steam vessels other than ferryboats and vessels otherwise expressly provided for, navigating the bays, lakes, rivers, or other inland waters of the United States, except those mentioned in Rule 6, shall carry the red and green lights, as prescribed for ocean-going steamers; and, in additon thereto, a central range of two white lights; the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel. The headlight shall be so constructed as to show a good light through twenty points of the compass, namely: from right ahead to two points abaft the beam on either side of the vessel; and the after light so as to show all around the horizon. The lights for ferryboats shall be regulated by such rules as the Board of Supervising Inspectors of Steam Vessels shall prescribe.

RULE 10. All vessels, whether steam vessels or sail vessels, when at anchor in roadsteads or fairways, shall, between sunset and sunrise, exhibit where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all around the horizon, and at a distance of at least mile.

RULE 11. Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the mast-head, visible all around the horizon, and shall also exhibit a flare-up light every fifteen minutes.

RULE 12. Coal boats, trading boats, produce boats, canal boats, oyster boats, fishing boats, rafts, or other water craft, navigating any bay, harbor or river, by hand-power, horse-power, sail, or by the current of the river, or which shall be anchored or moored in or near the channel or fairway of any bay, harbor, or river, shall carry one or more good white lights, which shall be placed in such manner as shall be prescribed by the Board of Supervising Inspectors of Steam Vessels.

STEERING AND SAILING RULES.

RULE 18. If two vessels under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

RULE 19. If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side, shall keep out of the way of the other.

RULE 21. Every steam vessel, when approaching another vessel, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam vessel shall, when in a fog, go at a moderate speed.

RULE 22. Every vessel overtaking any other vessel shall keep out of the way of the last mentioned vessel.

RULE 23. Where, by Rules 17, 19, 20, and 22, one of two vessels shall keep out of the way, the other shall keep her course, subject to the qualifications of Rule 24.

RULE 24. In construing and obeying these rules, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case rendering a departure from them necessary in order to avoid immediate danger.

We have omitted printing Rules, 8, 9, 13, 14, 16, 17, and 20, not deeming them important to any question involved in this action.

SEC. 4235. Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the states respectively wherein such pilots may be, or with such laws as the states may respectively enact for the purpose.

Contained in Title 48, "Regulation of Commerce and Navigation," Chapter Two, "Clearance and Entry," is :

SEC. 4214. (p. 812.) The Secretary of the Treasury may cause yachts used and employed exclusively as pleasure vessels, and designed as models of naval architecture, if entitled to be enrolled as American vessels, to be licensed on terms which will authorize them to proceed from port to port of the United States, and by sea to foreign ports, without entering or clearing at the cutsom house. Such license shall be in such form as the Secretary of the Treasury may prescribe. The owner of any such vessel, before taking out such license, shall give a bond, in such form and for such amount as the Secretary of the Treasury shall prescribe, conditioned that the vessel shall not engage in any unlawful trade, nor in any way violate the revenue laws of the United States, and shall comply with the laws in all other respects. Such vessels so enrolled and licensed shall not be allowed to transport merchandise or carry passengers for pay. Such vessels shall, in all respects, except as above, be subject to the laws of the United States, and shall be liable to seizure and forfeiture for any violation of the provisions of this Title.

Title 52, Chapter One, contains :

SEC. 4426. (p. 858.) The hull and boilers of every ferryboat, canal boat, yacht, or other small craft of like character, propelled by steam, shall be inspected under the provisions of this Title. Such other provisions of law for the better security of life, as may be applicable to such vessels, shall by the regulations of the board of supervising inspectors, also be required to be complied with, before a certificate of inspection shall be granted ; and no such vessel shall be navigated without a licensed engineer and a licensed pilot.

There is contained in Title 10, Chapter 20, of the revised statutes of the State of New York (in any edition) and on pages 2,246 and 2,247, Vol. III, Banks Brothers' eighth edition, as follows:

SEC. 8. Whenever any steamboat shall be navigating in the night time, the master of such boat shall cause her to carry and show two good and sufficient lights, one of which shall be exposed near her bows, and the other near her stern, and the last shall be at least twenty feet above her deck.

SEC. 12. Whenever any vessel navigating that part of the Hudson River which is north of the battery, at the southern extremity of New York, or navigating Lake Champlain, shall be at anchor in the night time, the master of such vessel shall cause her peak to be lowered and shall cause a good and sufficient light to be shown in some part of her rigging, at least twenty feet above her deck and from her taffrail; under the penalty of fifty dollars, to be sued for and recovered, against the master of such vessel, by the overseers of the poor of the city or town in which the offence shall have been committed. And in case such penalty cannot be collected from the master, the owners of such vessel shall be liable therefor, as provided in the preceding tenth section.

IV.

Errors of the Yacht's Navigation Pointed Out.

FIRST.—It was gross negligence of the yacht when in the second situation—running on a parallel line with the steamboat, to have given one whistle. She should have given two whistles, that would have required each vessel to have continued on her course. If the yacht wanted to cross the bow of the steamboat, she should have given a single whistle and procured the assent of the steamboat, in time to have enabled the vessels to pass in safety on a crossing course—which she did not do.

For facts, see sub-divisions 2nd and 3rd, page 5 of this brief.

In all cases the signals by whistle first given, must be given in time to allow the other vessel to comply with and to pass as desired. If not so given in time the vessel to which it is given is not bound by it although it may have accepted by an answering whistle.

The Khedive and Voorwarts, 5 Appeal Cases (House of Lords) 876, 905;
The Wenona, 19 Wall, 41, 42;
The Dexter, 23 Wall, 69;
The Milwaukee, Brown's Adm. R. 313;
The Aurania & Republic, 29, Fed. R. 123–127, American authorities cited on pages 124.
The Benares, Law Reports, Vol. 9, Probate Division, 10;
The Beryl, id. 137, 140;
The America, 92 U. S. 432 in opin. 437;
The Maggie J. Smith, 123 U. S., 349 in opin. 355;
The City of New York, 147, U. S. R., p. 72.

The yacht immediately on giving her single whistle changed her course to a crossing course in front of the bow of the steamer, without waiting for and obtaining an answer; this she had no right to do. Cheasapeake & O., Ry., Co. The Pamona 46 Fed. R. p. 496. The Hudson, 14 Fed. R. 489.

If the single whistle which was answered as well as the two whistles which were answered were all given too late, then the yacht is in fault for having given the first whistle too late to initiate the manœuvre.

The proposition made by the single whistle was a guarantee to the vessel to which it was given that it could be complied with in time. The answer to the first whistle was only an assent to be taken at the risk of the yacht and if it could not be complied with, the responsibility remained with the yacht.

The steamboat is also free from blame under another rule where one party suddenly puts another in jeopardy, *in extremis*, if the party so put in jeopardy does not use the best judgment to avoid the collision, it is free from blame.

The Bywell Castle, Vol. IV, Probate Division, p., 219 in opin. 223, 227, 228, 229.

The Beryl, Vol. 9, Probate Division, p. 137.

McLaren and other others vs. Campagnie Francaise, &c., Vol. 9 Appeal Cases (1883, 1884 House of Lords,) p. 649.

The Blue Jacket, 144 U. S., 371, in opin.

The Macooche, 137 U. S., 330, in opin. 340, 53 Fed. R., p. 553, 147 U. S. R., p. 72, in opin. 85.

In any event after the single whistle was given and answered it was competent for the parties to agree upon passing the other way by giving two whistles, these being answered.

Cooper vs. Eastern Transportation Co., 75 N. Y., R. 116. Dismissed for want of jurisdiction, 99, U. S. 78.

Blanchard vs. N. Y. Steamboat Co., 59 N. Y., R. 292.

SECOND.—It was gross negligence for the yacht not to slow, stop, and back.

For facts, see sub-division 11, p. 13 of this brief.

Rule 21 of Sec. 42 3, R. S., and Inspectors Rule 3, each require, when the vessels have approached so near that danger of a collision is apprehended, each vessel shall slow, stop and back if necessary to avoid a collision.

Inspectors' Rule 3, has it, that if the vessels shall have approached within a half a mile of each other, without having come to an agreement by whistles, or have failed to understand the intention of each other, must slow, stop, back, etc.

We cite for authorities to support this proposition, the same cases cited under the first division of this point. (147 U. S. R., p. 72, 75, 84, 85).

THIRD.—The yacht was negligent in running with colored lights that would not show ahead and could not be seen by the steamboat when the yacht was approaching her. The green light was never

seen, and the red light, just a moment before the collision, when on her changed course, exposed the port side of her bow to the steamboat.

For facts see sub-division 6, p. 9 of this brief.

FOURTH.—It was a question of fact if the speed of the yacht was not excessive under the circumstances.

For facts, see Seventh Div. of Point 2, p. 10, of this brief; Rogers vs. Steamer, "St. Charles," 19 How, U. S. R., p. 105, 108; Law of collision at sea, Marden, 2d edition, p. 351, 358.

FIFTH.—The yacht's pilot was incompetent. For facts, see Div. 12th, of Point 2, p. 14, of this brief.

V.

The learned Judge who wrote the dissenting opinion in the Court of Appeals on the question of Contributory Negligence did not comprehend the evidence and apply the law to the facts as found by the jury.

The learned Judge admits in his opinion that the yacht was in fault, but also held that the steamboat was in fault, making her guilty of contributory negligence; basing it solely upon the ground that the vessels were approaching each other on oblique courses, and that the steamboat had the yacht on her starboard side and was bound to keep out of the way.

The learned Judge fails to take into consideration that the two vessels had been running on parallel courses; shown by divisions second and third, on pages 5 of this brief. That the yacht gave a single whistle which was heard on the steamboat; and at that instant of time changed her course to cross the bow of the steamboat; and from that time to the time of the collision, was not more than probably one-half a minute. Therefore the assumption of the Judge that they were approaching each other on oblique courses must be limited to the time subsequent to the time the yacht gave the single whistle which was heard on the steamboat.

The Inspectors' Rules provide for signals to be given in each of the seven situations: When the signal is given which initiates the intended movement, that this movement shall be continued until it has been finally agreed upon and shall all be completed before either vessel undertakes to make the change. If as the learned Judge states the vessels were approaching on oblique courses, to make this rule apply they must have been running on these courses before the initial movement was made; if not, then the moment the initial movement was made produced another situation and required other signals to be given in that situation, and so you will go all around the circle of the seven situations without arriving at a completion of signals required by the rules to be given, for the situation in which the vessels were when the movement was first initiated.

VI.

The yacht was running in open violation of law.

Before she could run she had to be inspected, three copies given, two of which had to be hung up. Section 4423.

Her inspection certificate in evidence shows it is in the form adopted by the Board of Supervising Inspectors at their annual session in January, 1880. Approved by the Secretary of the Treasury, February 13, 1880 (21).

This action of the Board of Inspectors when confirmed by the Secretary of the Treasury has the force of law. Section 4411; 88 N. Y. R. 184; 4 How. U. S. R. 80; 100 U. S. R. 13, 22.

The route described in this certificate is an ocean rout for one year (19).

The voyage she navigated was wholly an inland route. She started in the forenoon from City Island at the east end of the East River, came to New York, laid there until about 4 P. M., when she started for Catskill. Therefore there is no room for the construction of the statute that an ocean going steamer which is on a route which is partly ocean and partly inland, may continue her voyage until ended, without change of lights.

For facts, see under voyage, page 5 and 6 of this brief.

One of the reasons why a vessel having an ocean route cannot run on an inland route is, her inspection is not only different, but her officers, pilots, etc., are under the law licensed for the particular route. The yacht changed her pilots at New York so she would have a licenced pilot for the Hudson River; why any more need to change her pilots at New York so she would have a licensed pilot than lights if this vessel could run any where with ocean lights.

We admit that although she was running on prohibited waters, that gave us no right to willfully come in collision with her, but the rule of negligence would be changed, before the yacht could escape liability; would have to show that the steamboat was by the willful and grossly negligent acts of the officers in command of her, so navigated that the collision was produced.

VII.

Every vessel before she can navigate, fly the flag, and claim the protection of the laws of the United States, must be either registered or enrolled (secs. 4131–55 of R. S. of U. S.).

Before she can leave a port for a foreign port she must deliver a manifest and obtain a clearance from the collector of the port in the form prescribed (4197–4201).

Before she departs for a foreign country must procure a passport (sections 4306, 4307). And she must also be inspected.

If of twenty tons or upward burthen, must be enrolled and licensed (sections 4311–4321).

An enrolled vessel is prohibited from sailing on a foreign voyage (sections 4322–4338). The sea coast and navigable rivers of the United States are divided into great districts (4348). And cannot

travel from one great district to another without a permit from the collector, except on the Mississippi River and tributaries (section 4349.)

These vessels are called "vessels in domestic commerce," see the heading of title 50, and are entitled "to the privileges of vessels employed in the coasting trade and fisheries." (Sec. 4311.)

The only exceptions to the foregoing in which vessels can be vessels of the United States, are those engaged in the fisheries and those mentioned in section 4385, neither of which are important to examine.

An enrolled vessel may surrender her enrollment and license and become registered (sec. 4322), and a registered vessel may surrender her registery and take out an enrollment.

From the earliest history of the legislation by Congress, the United States government has made a distinction in the navigation laws between vessels engaged in foreign commerce and those engaged in domestic commerce; have jealousy guarded against any transportation of freight or merchandise from port to port within the United States or upon its inland waters by any vessels excepting those of the United States.

These acts above referred to all show that yachts became American vessels, and whilst they are not permitted to engage in commerce, they, by being enrolled and licensed, are granted all the privileges under the Navigation Laws that any vessels are entitled to under enrollment.

By the amendment of 1870, they got the additional right to proceed by sea to foreign ports without entering or clearing at the custom-house.

The Court of Appeals in its opinion drew the distinction between a yacht with the right of a coaster and an ocean steamship, see opinion, on pp. 208 and 210.

VIII.

This Court has no jurisdiction. The plaintiff in error has not shown he has any right under a United States Statute, which has been decided against him.

A.—THE YACHT HAVING NO COLORED LIGHTS THAT WOULD SHOW AHEAD, WAS NOT COMPLYING WITH THE UNITED STATES STATUTES.

The yacht was running with but one light; the high foremast-head white light, without colored lights, that could be seen on the steamboat as the yacht was approaching her.

For the facts, see Fifth and Sixth Divisions on pages 8 and 9, of this brief.

The foremast-head light, under Rule 3, Sec. 4233, R. S., is no protection to the yacht, even if she was entitled to carry it without a bow light to make a central range light. To come within this Rule three the lights required, are namely: The mast-head light, a green light on the starboard side, and a red light on the port side.

These colored lights are to give notice to another vessel if she is approaching her, and if so, whether from in front or from which side, to show if there is any danger of a collision. Without this system of

United States upon the high seas and in all coast waters of the United States are hereby repealed, except as to the navigation of such vessels within the harbors, lakes and inland waters of the United States, and this act shall take effect and be in force from and after the first day of September, *anno domino* 1884."

The provisions contained in Rule 7 of Section 4,233, have been continued to be used in navigation, and was not repealed by this act of 1885.

Chapter 802, approved August 19, 1890, entitled "An Act to adopt regulations for preventing collisions at sea." "Be it enacted, etc., that the following regulations for preventing collisions at sea shall be followed by all public and private vessels of the United States upon the high seas, and in all waters connected therewith navigable by sea-going vessels."

This act is divided up in articles, and is more comprehensive and specific than the act of 1885. It provides for a foremast head white light, and also that it may carry an additional white light forward of the foremasthead white light and lower down. That will make a central range light.

This act also reserves and excepts from its operation local laws. Article XXX.: "Nothing in these rules shall interfere with the operation of a special rule duly made by local authority relative to the navigation of any harbor, river or inland water."

Section 2. "That all laws or parts of law inconsistent with the foregoing regulations for preventing collisions at sea, for the navigation of all public and private vessels of the United States upon the high seas and in all waters connected therewith navigable by sea going vessels are hereby repealed."

Section 3. "This Act shall take effect at a time to be fixed by the President by proclamation issued for that purpose."

Rules 5, 6 and 7 of Section 4233 are omitted from this Act of 1890. The British Rules, adopted in 1884, (left hand column, Marsden 2nd Edition, page 471)," are identical with the Act of 1885, and have been adopted by nearly every maritime power.

Why were these Acts of 1885 and 1890 passed, leaving out Rules 5, 6 and 7 from Section 4233 of the revised statutes, and declaring in express terms, by the Act of 1885, if it is only to apply to navigation upon the high seas and in all coast waters of the United States, except such as are otherwise provided for? And in the act of 1890, for the navigation upon the high seas and in all waters connected therewith, navigable by sea going vessels?

"The Court is referred to Section 4235 of the Revised Statutes, that until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the states respectively wherein such pilots may be; or with such laws as the states may respectively enact for the purpose."

The Act of the Legislature of New York from which we have heretofore printed Section 8, is still in full force, Congress has not by any of these navigation laws undertaken to supersede this local state law

which governs and controls, so far as the central range light in concerned, on steam vessels navigating the Hudson River at night.

The Steamboat N. Y. vs. Brig Johanna 18 How, U. S. 223.

The Fyenoord, Swabs Adm. 374.

Therefore, this Court has no jurisdiction to review the judgment, as it involved no construction of the Act of Congress.

C.—THE COURT OF APPEALS LIMITED ITS DECISION TO THE RIGHT TO CARRY CENTRAL RANGE LIGHTS ON INLAND WATERS, AND THEREFORE THIS COURT HAS NO JURISDICTION.

The Court of Appeals in deciding this case held "The Yosemite was, we think, in legal character and by proper nomenclature is 'a coasting steam vessel,' and was therefore within the express term of rule seven bound to carry the central range lights described in that rule. Even if this may not be absolutely true of the Yosemite in all situations it was nevertheless true of her when navigating inland waters." "The legal character of a vessel is to be determined by reference to the statute and the ship's papers."

The Court of Appeals, in deciding this case, held it was not necessary to decide the general question whether this yacht was, at the time of the collision, an ocean going steamer and a steamer carrying sail with a right to carry the high masthead light and the colored lights while on this voyage up the Hudson River.

The evidence clearly shows that this voyage commenced and ended on inland water, exclusively within the State of New York, and that the distance she ran from City Island to Catskill was the entire voyage she did take. The decision of the Court was correct, that while she was sailing on this voyage, in the night time, she was bound to carry the central range light. See opinion printed in the record, page 208–211. In the report of the case in 104 N. Y. R., page 86, is contained quite an extended statement, of facts, before the opinion.

For the facts see under head of Voyage on page 4 of this brief.

D.—THE YACHT IS NOT A STEAMER CARRYING SAIL UNDER RULE 3, AND THEREFORE THIS COURT HAS NO JURISDICTION TO REVIEW THE JUDGEMENT AS NO DECISION WAS MADE AGAINST THE RIGHT, ETC.

Rule 3, of Section 4233, provides: "All ocean-going steamers, and steamers carrying sail, shall, when under way, carry" the fore-mast-head white light and the colored side lights. What do these words, "and steamers carrying sail," mean?

We claim that an ocean-going steamer means a steamer traveling on the ocean, not a steamer constructed in a particular manner or of such form or strength as would enable her to navigate the ocean, but if she choose to run on inland waters should from such construction carry the lights provided by rule 7 while navigating inland waters.

If this was not so then the form of the vessel and not the waters on which she ran would determine the kind of light she should carry.

The words "and steamers carrying sail" mean a steam vessel not only constructed for carrying sail but navigating the ocean. Steamers to carry sail are constructed, for ocean navigation, to have the means of locomotion in case of breakdowns of machinery as well as to aid with sail power when the wind will admit of it.

Steam vessels are not constructed in this way for river navigatio
The word "steamships," originally used, is another indication of
as ships are not constructed for inland navigation. The words use
in the middle of rule 7, "as prescribed for ocean-going steamers,"
a legislative construction that both of these classes of steam vessel
were ocean-going steamers.

We claim that this yacht at the time of the collision, "was not
steamer carrying sail," under rule three.

The language of rule 1 is every steam vessel which is *under sail*
and not *under steam*, shall be considered a sail vessel, and every
steam vessel which is *under steam*, whether *under sail or not*, shall be
considered a steam vessel, clearly shows to be a steamer carrying
sail under way means that she must be propelled in part by sail
power, with her sails spread, if there is to be any distinction between
a plain ocean steamer without being rigged for sails with one that is
so rigged.

This yacht, as we have shown (situation of sails pg. 4 of this brief,
was as free from sail, so far as use was concerned, on this voyage
as she would have been if they had been taken off the vessel and
stored in her hold or put in a warehouse on land. We think no
steamship has ever been constructed without masts. The very rule
itself proves it, for it says the white light must be carried on the
"foremast head"—contemplates more than one mast and defines,
which mast the light must be on.

The argument that the central range lights prescribed by rule 7
would be obscured by the masts is not tenable, and could only, at
most, for the thickness of the mast, obscure them in a direct line
from right ahead. Under rule 11 pilot boats are required to carry a
mast head light which will show all around.

River steamboats usually have masts or other obstructions higher
than the after light, especially smoke-stacks, which are much larger
than a mast, and that is no violation of rule 7, or an excuse for not
carrying the central range light.

IX.

The yacht in no event had a right to run on the Hudson River with the high masthead light.

If the Court is of the opinion that a federal question is involved,
and that facts in this case call for a decision of the broad question,
that this yacht had as much right to run with the foremast headlight
as an ocean steamer would have to continue her voyage up the Hud-
son River in the night, with the lights called for under Rule 3, then
under this point we shall present our views upon the subject, that
such right in no event existed. The dissenting opinion of presiding
Justice Learned at the General Term on the first appeal, 54 Hun,
571; the opinion of the Court of Appeals, page 208–210 of this
record; the opinion of the General Term at page 202–207 of this
record; the opinion in the cases of Glaucus, Lowell's R. 366; the
Continental, 14 Wallace, 345; the Conaho, 24 Fed. R., 758, present
the contention of the defendant in error and the prevailing opinion

at the General Term on the first appeal, 54 Hun, 571, presents the contention of the plaintiff in error, so far as we have been able to find judicial construction of this statute. This single question the General Term examined on the first appeal, and on which the judgment was reversed. Before proceeding to discuss the construction of the statutes, we will call the attention of the Court to the history and the state of the law both in this country and Great Britian, before the passage of the act of 1864.

The admiralty courts in administering the general admiralty law, which was international, would not enforce any statute or regulation of any particular country which was in contravention of that law, except where the parties in interest were citizens of the country of the local law, or both vessels were vessels of that country, or the place of the collision or injury was within the Territorial limits of the country of the local law.

The law of Collisions at Sea.
Marsden, 2d ed., London, 1885, pp. 208-215.

The confusion arising from this state of affairs, of one rule upon the high seas between two vessels of one country where there was a local law, and another rule where both the vessels or one of them belonged to another country, resulted in the adoption of the present international code (Marsden 2d ed. p. 215), which we will hereafter call attention to, and which we insist only applies to the high seas so far as the United States is concerned, and not to the great rivers within this country, upon which the navigation is termed inland navigation. Before the adoption of the international code, so far as lights are concerned, the general admiralty law did not require either steam or sailing vessel to carry any lights.

The Iron Duke, 2 W. Rob. R. 377.
The Barque Delaware vs. The Steamer Osprey, 2 Wallace C. C. 268, 275.
N. Y. & V. SS. Co. v. Colderwood, 19 How. (U. S.) 241.

The admiralty courts, however, in administering the law, gradually adopted the principle that they would hold it a fault of a vessel under special circumstances such as the darkness of the night, in navigating a frequented path of a vessel, or anchoring in a fairway or roadstead, if it failed to expose a light, but had not held what the character of the light should be, its size or place it should be exposed.

Marsden, 2d ed., p. 315.
The Victoria, 3 W. Robt. 49.
The Iron Duke, 4 Not. of Cas. 94.

In administering the admiralty laws, the admiralty courts in England call to their aid two of the trinity masters to advise the Court on questions of seamanship and skill in navigation under such state of facts as the Court deems proper to submit to them.

These trinity masters, being a body of men skilled in navigation and seamanship, adopted, in 1840, what were known as sailing rules for vessels in passing or meeting, which were in the main in conformity to the decisions of the admiralty courts, and they were enforced by the admiralty courts of England as between British subjects and British vessels, and also as between subjects and vessels of other

nations, wherein they conformed to the general admiralty law, until 1846, when an act of Parliament was passed as to the duties of vessels in meeting and passing.

Marsden, 2d ed., pp. 296, 297.

9 and 10 Victoria, ch. 100, secs, 9, 10, 12, 36 pp. 790, 793, 798.
14 and 15 " " 79, secs. 11, 25, 26, 27, 28, 48, pp. 599, 604, 610.
17 and 18 Victoria, ch. 104.
25 and 26 " " 63, secs. 5, 25, 26, 28, 29, 30, 31, 32, 39, 57, pp. 416, 17, 24, 25, 43.

The first law in Great Britain requiring lights to be carried was a regulation under 14 and 15 Victoria, chapter 79, section 26, requiring a sailing ship to exhibit a light, and steamship to exhibit the colored lights, one on each side, and in 1857 for sailing ships to exhibit the colored lights, one on each side.

Marsden, 2d ed. pp. 297, 315, 321.

In 1863, 25 and 26 Victoria, chapter 63, a more comprehensive law was passed, to take effect not earlier than June 1, 1863, in which her Majesty was by the 25th section on the recommendation of the Admiralty and the Board of Trade by Order in Council, might annul, modify, make new or alter the regulations, etc., and when made, to be of the same force as the regulations in Schedule C, referred to in the act. See the regulations contained in the schedule at pages 443, etc., of 25 and 26 Victoria. Regulations in 1863 were made under this act, which will be found from pages 471 to 486 (in the right-hand column) of Marsden, 2d edition, and which are identical, or substantially so, with schedule C in said act. The regulations of 1863 were somewhat modified by orders in council. In 1880 a new set were passed, and those of 1863 repealed; in 1884 those of 1880 were repealed and a new set of regulations were enacted, which will be found in the left-hand column of pages 471 to 486 of Marsden.

Also see pages 297, 298 and 314 of Marsden. No signals by whistles were required by the English regulations until 1880, and were re-enacted in the 19th Article of the Regulations of 1884.

The foregoing presents the history of and the present condition of the British statute law of navigation, including lights and whistles.

We will next examine the history of the statute law requiring lights to be carried on steamboats.

The first law we can find is Chapter 222 of the Laws of New York, 1826, printed near the end of Point 3 of this brief.

The first provision of Congress we can find in reference to lights is contained in the 10th section of chapter 191, passed July 7, 1838 (p. 306, 5th vol. Statutes at Large). The act is entitled "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam." The act provides that the owners of steamboats or vessels propelled in whole or in part by steam to take out a new enrollment and a new license under existing laws before the 1st of October, and that it shall be unlawful to carry any goods or passengers after October 1st "upon the bays, lakes, rivers or other navigable waters of the United States" without obtaining the license and complying with the conditions of this act.

It requires the district judge to appoint inspectors, and they to inspect the hulls, boilers and machinery and how frequently to be inspected, and give certificates of the inspection.

Requires every such steam vessel running, carrying freight or passengers, on lakes Champlain, Ontario, Erie, Huron, Superior and Michigan, to carry long boats or yawls.

And those employed on either of said lakes, or on the sea, to have a suction hose fire-engine and hose for use in case of fire, and to have iron rod and chains to tiller, instead of ropes; after all of which provisions follows:

"SEC. 10. And be it further enacted that it shall be the duty of the master and owner of every steamboat running between sunset and sunrise to carry one or more signal lights that may be seen by other boats navigating the same waters, under the penalty of two hundred dollars."

The next law is chapter 105 of the Laws of 1849, vol. 9, U. S. Statutes at Large, page 380. This act is entitled "An act making appropriations for light-houses, light-boats, buoys, etc., and providing for the erection and establishment of the same, and for other purposes."

The entire act is in reference to light-houses, light-boats, and buoys, except the last section, and which is section 5, and contains the following provision:

"That vessels, steamboats and propellers navigating the northern and western lakes shall, after the 30th day of April next comply with the following regulations for the security of life and property." Then follows the lights to be carried by sailing vessels, and continues: "Steamboats and propellers shall carry on the stem or as far forward as possible a triangular light at an angle of about sixty degrees with the horizon, and on the starboard side a light-shaded green, and on the larboard side red side lights shall be furnished with reflectors, etc., complete and of a size to insure a good and sufficient light;" and further provides "if damage shall occur from neglect to comply with the above provisions the owner shall be liable for the damages."

The next act is chapter 106 of the Laws of 1852, pages 61 to 75, vol. 10, U. S. Statutes at Large. It is entitled "An act to amend an act entitled 'An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, and for other purposes.'"

The act provides that "no license, registry or enrollment under the provisions of this or the act to which this is an amendment, shall be granted or other papers issued to any vessel propelled in whole or in part by steam," etc., until the provisions of this law are complied with (sec. 1, page 61).

And that the act should not apply to public vessels of the United States or vessels of other countries, ferry boats, tug boats, towing boats, nor to steamers not exceeding 150 tons, used in whole or in part in navigating canals (sec. 42, page 75).

The act is a comprehensive act providing for the annual inspection of steam vessels, as to hulls, boilers and machinery; also for the

examining and licensing of engineers and pilots, for life saving and fire extinguishing apparatus on board, and after the inspection is completed requires the inspectors to make out a certificate stating in detail what the certificate shall contain, among which is the route and limits within which the vessel can run (sub. 4, sec. 9, pages 65 and 66); shall examine and license pilots (sub. 9, sec. 8, page 67).

The act also authorizes "the supervising inspectors to establish such rules and regulations to be observed by all such vessels in passing each other as they shall from time to time deem necessary, etc. And no such vessel shall be justified into coming in collision with another if it can be avoided" (sec. 29, page 72).

While lights and whistles are not mentioned, this provision gives ample powers by regulations, to require them.

We find in the 12th annual meeting of the Supervising Inspectors held in 1863, they revised and amended the former rules and entitled them "Pilot Rules," "Rules and Regulations for the government of Pilots of steamers navigating the Coasts, Rivers or Lakes of the United States." These rules will be found on pages 25 to 28 of Inspectors' Proceedings of 1863.

These rules prescribe the whistles to be given very similar to those contained in the statutes and rules now in force. Rules 16 (page 27) provided that all steamers should carry the colored side lights as at present, and should also carry a central range of white lights, one at the bow and the other at the flagstaff at the stern substantially as provided by rule 7, of section 4233 of the Revised Statutes.

The next law of Congress is chapter 69, laws of 1864 (page 58, vol. 13, U. S. Statutes at Large).

The law is substantially what is now section 4233 of the Revised Statutes, except rules 5, 6 and 7 and such other dffferences as will be hereafter pointed out.

The object of the passage of the law of 1864 appears from the Congressional Globe (1st session, 38th Congress, part 2, pages 1387 and 1388). Mr. Elliott, of Boston, Chairman of the Committee on Commerce and Navigation, having charge of the bill when it came for its final passage, in addressing the House on the necessity for the passage of the act caused to be read a letter from Lord Lyons to the Secretary of State expressing the desire of the British government, enclosing with it a copy of the rules adopted in Great Britain in 1863, to have the United States pass a similar law to the end that navigation upon the high seas would be by uniform regulations, etc. The bill was unanimously passed. A comparison of the act of 1864 with the British rules adopted in schedule C, page 443, etc., 25 and 26 Victoria, shows that the act is an exact transcript of the British act.

The rules adopted shortly after the passage of the British act by Her Majesty's Council under the authority of the act is also substantially identical, except in the Revised Statutes the words "steam vessels" and "sailing vessels" have been substituted for the words "steamships" and "sailing ships" in the act of 1864. Also the head-

ing over the several sections in the act of 1864 are omitted in the Revised Statutes.

Rules, 5, 6 and 7, contained in the Revised Statutes, are not contained in either the British act or in the act of Congress of 1864. The rules in the Revised Statutes subsequent to rule 7 are identical with the rules subseqent to rule 4 in the act of 1864, except using the words "steam vessel" in place of "steam ship." When we look at the act of 1864 it is plain it was only intended to be adopted as rules of navigation upon the high seas and not on inland waters exclusively within the jurisdiction of our government.

The object sought to be obtained by the passage of the act also proves it. The rules adopted in Great Britain in 1863 were simultaneously adopted by the French Government and have since been adopted by over thirty of the maritime governments of the world.

Our own courts hold as well as the Courts of Great Britain that this legislative action amounts to the force of international law.

New York & Virginia S. S. Co. v. Colderwood, 19 How-U. S. 241.

We have traced out the history of these laws govering lights and sailing rules, and they clearly show two classes, one for ocean navigation and the other for inland navigation.

Inland navigation, not only before the act of 1864, but after that act was regulated by the before-mentioned Inspection laws, and the regulations of the Board of Supervising Inspectars established by virtue of the powers given them in the inspection law of 1852.

Chapter 234, Laws of 1866, vol. 14, U. S. Stat. at Large, page 227, was another inspection law. So appearing from its title as well as its contents, and made additions to the inspection law of 1852.

The 11th section of this act is the first provision of the acts of Congress wherein the central range light is required, by express language.

The next inspection law is the act of February 28, 1871, vol. 16, U. S. Stat. at Large, page 440.

It is entitled "An act to provide for the better security of life on board of vessels, propelled in whole or in part by steam, and for other purposes."

The contents of the law shows it to be an inspection law, more full and complete in its details than any and all the previous inspection laws, and by the 71st section repeals all the former inspection laws.

The 47th section of this act relates to lights, and requires the central range light to be carried.

In each of the sections in the acts of 1866 and 1871, and in reference to lights after providing for the lights to be carried by steamers navigating the Mississippi river and tributaries and other vessels, then follows: Every coasting steam vessel and every steamer carrying sail navigating bays, lakes or other inland waters, other than ferry-boats *and those above provided for shall carry the red and green lights as provided for ocean-going steamers, and in addition thereto a central range of white lights, etc.*

Both the acts of 1866 and 1871 repeal all acts and parts of acts inconsistant therewith.

When the Revised Statutes were adopted, the international code adopted by the act of 1864 was embraced in section 4233 down to and including rule 4. Then follows rules 5, 6, 7 and 12, which are taken from section 47, of the act of 1871, showing conclusively the vessels named in these rules 5, 6, 7 and 12 were never intended to be governed by rule 3, further than expressly named that they should carry the red and green lights. The words "expressly provided for" in rule 7 are the equivalent of the words "above provided for" in section 47 of the act of 1871, and apply to the vessels named in rules 5, 6 and 12, and not to those named in rule 3. The rule has been adopted in the construction of a revised act, that a mere change in language shall not be regarded as an evidence of an intention to vary the construction unless the change is such as to render that change manifest and certain.

Dominick vs. Michael, 4 Sand. R. 409.
Taylor vs. Delaney, 2 Caines Cases in Error, 151.
Goodill vs. Jackson, 20 Johns, 723.

We therefore say that the distinction which had been made between the inspection laws providing solely for vessels navigating inland waters of the United States from ocean navigation, was intended to be continued by Rules 5, 6, 7 and 12. We insist that this appears from the several rules when separately examined. Rule 3 provides solely for "ocean going Steamers and Steamers carrying sail." See sub-division of Point 8, p. 27, 28 of this brief, where we examined the question of this yacht, was a steamer carrying sail.

Rule 4 applies solely as to the lights on steam vessels when towing other vessels, and was doubtless intended for them when towing on the high seas.

Rule 5 provides that all steam vessels other than ocean-going and steamers carrying sail shall carry the same colored mentioned in rule 3, except those navigating rivers flowing ulf of Mexico, and is wholly silent as to what lights shall be carried.

Rule 6 provides only for the colored lights on river steamboats navigating waters flowing into the Gulf of Mexico.

Then follows rule seven, the construction of which rule is the one involved in this action. This rule starts out "All coasting steam vessels and steam vessels other than ferry boats *and vessels otherwise expressly provided for.*"

There are, it will be seen, two excepted classes. The first is ferry boats, and the subsequent part of the section as to those declares, they shall carry the lights required by rules prescribed by the board of Supervising Inspectors. Therefore the exception of ferry boats only aids us in the construction of the rule, to the extent that the previous rules are not to govern ferry boats, but are to be provided for by independent regulations. Ferry boats need not necessarily be propelled by steam. The section does not limit them to be steam ferry boats. That leaves us the words "and vessels otherwise

expressly provided for." The words "and vessels" does not embrace steam vessels solely, but they may be other kinds of vessels.

The subsequent rule 9 refers to small vessels, and rules 12 and 13 also refer to other kinds of vessels and these last three rules only speak of colored lights, and they are all different from the colored lights mentioned in rule 3. We say these vessels mentioned in rules 5, 6, 9, 12 and 13 are the other vessels expressly provided for. The words are also more properly applicable to other vessels which may, by subsequent or other laws, be expressly provided for as to the lights to be carried by them.

Then again all of this section down to the semi-colon, refers to red and green lights. Do not all the words which qualify or limit the first seven words in the section refer solely to the colored lights?

Then again we have the limitation by the words "navigating the bays, lakes or other inland waters in United States."

These words, we say, clearly mean that the vessels engaged in the navigation of these inland waters are to carry the lights provided for by this rule, and the "ferry-boats and vessels otherwise expressly provided for" are limited to the inland waters immediately after described. Who has ever heard of a ferry-boat running on any other kind of water than there described? They do not cross the ocean or other great bodies of water.

After the semi-colon in rule 7 comes the language "and in addition a central range of two white lights," with a description of the lights, one to be placed on the bow to show through twenty points of the compass from right ahead to two points abaft the beam, and the after-light to be carried at least fifteen feet above the light at the head of the vessel and "to show all around the horizon."

We have the Inspectors' certificate of the Charlotte Vanderbilt and she was inspected for this central range of lights, had them on, and the answer admits she had the proper regulation lights. The yacht's inspection gave her an ocean route and put the ocean lights on her.

On the trip she navigated she was exclusively on an inland route. The central range of lights have a two-fold meaning necessary for river navigation.

They tell with unerring certainty from any point ahead, the course the steamboat is pointing and appoximately tell nearly so from any point on either side not more than two points abaft the beam. The

colored lights may aid but the range lights are more certain than the one high light.

The other reason is in rivers, narrow channels and waters crowded with vessels, it is as necessary to see a vessel ahead of you at night as to see one appoaching you. The after light of the range lights showing all around, when that is seen alone, you know a steamer is ahead going in the same direction with you.

The evidence also discloses, steam vessels towing others on rivers, have the two vertical high white lights astern, showing all around the horizon. The safety for navigation, and the practice, as long as steamboats have run on rivers, have carried these lights. It is not to be supposed that two different systems of lights for steam vessels was intended to be adopted for the same waters. The reasons for safety, as well as the past usage doubtless caused vessels to adopt one system for inland navigation, and another for the high seas.

Does this Court for an instant believe that river steamers with the range lights could run on the ocean under the same law? If not, why should ocean steamers be allowed to run on rivers with ocean lights?

It may be said it is inconvenient for an ocean steamer to change her lights when coming on a river. The answer is, safety to life and property overrules inconvenience. If such steamers will not change their lights, then they must cast anchor for the night. In almost all sea-port towns ocean steamers are not allowed to enter port except in daylight. Convenience yields to law and the necessity for safety. To change lights only require two different lights to be on board of the vessel. To be lighted and put in position and the high-mast head-light to be hauled down when night comes. Our construction of the statute is confirmed by the recent acts of Congress, chap. 354, Laws of 1885, and 802 of the Laws of 1890.

We have discussed the effect of these two Statutes, under "B" of Point 8, pages 24–27 of this brief, as bearing on the construction that local laws were excepted from the provisions of the international code, and that the New York State Statute there referred to is still in force.

We refer the Court to what we have to say under "B," of Point 8, without repeating it here.

Whenever the intention of the makers of a statute can be discovered, it ought to be followed with reason. A thing which is within the letter of a statute is not within the statute unless it be within the intention of the making.

Jackson Ex. Dem. vs. Callins 3 Cowens R. 89, in Opin. 96.
Holmes vs. Carey, 31 N. Y. R., p. 289 in Opin. 290, Court of Appeals.

Where a statute was intended to remedy the injurious operation of a previous rule or principle of law, to give a correct interpretation the Court should place itself in the situation of the legislature which passed the statute i. e., contemplate in the first place the law as it previously enacted and the necessity and probable object of the change, and then give such construction to the language used by the law-makers as to carry, their intention into effect so far as can be astertained from the statute itself.

Donaldson vs. Hood, 22 Wend. 395, in Opin. 397, (Court of Errors.)
People ex rel., vs. Lacombe, 99 N. Y. 43 in Opin. 49, (Court of Appeals.)

If there is a disagreement between two statutes, such exposition should be made as that both may stand together.

McCarthy vs. Orphan Asylum, etc., 9 Cowen 437, in Opin. 506, 507, (Court of Errors.)

All statutes in *pari materia* to be taken together.

Rodgers vs. Bradshaw, 20 Johns 735, in Opin. 744, (Court of Errors.)

In the construction of a doubtful and ambiguous law the contemporaneous and uniform construction, by executive officers charged with its execution, is entitled to great weight and this Court refused to interfere with such construction after it had been acted upon for a long time.

U. S. agst. Hill, 120 U. S. R., p. 169,

Citing on last page of opinion a long list of authorities, c
ing with 12 ~~Theodore~~, 206, Haughn vs. U. S., 107 U. S. I
in opin. 406. Also Fort vs. Burch, 6 Barb. R., p. 60, in
The evidence of the pilots on the river steamboats is that tl
range lights are the only lights used on the river.

Add to that the inspectors' rules (p. 192-199 of the Record,) which shows long usage. And as a matter of history, commencing with the inspection laws. (Ch. 106, L. 1852, 10 U. S. Stat. at L. p. 61.)

X.

The assignments of error should be overruled.

The first and third assignment should be overruled for reasons stated in previous points—III.-IX. inclusive. The second assignment of error states proposition that has never been claimed by the defendant in error.

There were fifty requests to charge, more than half of which were charged, the others were refused. The Court, in its charge to the jury, had fully set forth to them that if the plaintiff was guilty of negligence, or contributory negligence, the plaintiff could not recover. (Fols. 262-267.)

The requests to charge relate to three subjects.

FIRST.—The first four requests were that if the yacht was not a coasting vessel, then the lights she carried were those authorized by law.

That a coasting vessel is one engaged in the coasting trade. Requested that it be submitted to the jury, if the yacht was engaged in the coasting trade. That if the yacht was not a coasting vessel, then she displayed the lawful lights.

The fault of these requests are that there is no evidence on which to base these claims.

The right of the yacht to run and carry lights depended on her marine papers and the statute, and not on oral evidence, to construe them.

The Court of Appeals so held, and under these she could not carry the foremast-head light.

The trial Court had charged what lights she could carry. If the plaintiff in error had claimed any other lights should be carried, he should have requested the Court to charge the particular lights he claimed should be carried.

The fourth, fifth, sixth and seventh assignments of error, should therefore be overruled.

SECOND.—The 8th and 15th, both inclusive, 23d and 25th, requests all related to, claimed faults in the steamboat's navigation. The eighth request assumed that the vessels were approaching each other head on, or nearly so. The ninth, to and including the fifteenth, all relate to whistles, and assume the facts to be undisputed, and assume these whistles were based on the fact that the vessels were in the first situation.

We have shown that the vessels were in the second situation, and not only that, but that the yacht's colored lights did not show ahead, when approaching the steamboat, and the steamboat could not determine her position until she was almost in collision with her. (See Second, Third, Fifth and Sixth Divisions on pages 5–8 of this brief.)

The evidence warranted the Judge in submitting all these questions to the jury as dependant upon conflicting evidence.

The 23d and 25th requests assume the two vessels would have passed in safety if the "Vanderbilt" had not made a rank sheer and threw herself across the bow of the yacht. The proofs show that the vessels were in the second situation, and in that situation the yacht was west of the steamboat in the channel of the river; that when the yacht was almost colliding with the steamboat she changed her course from a safe position, to one crossing the bow of the steamboat. The plaintiff in error assumed on the trial, and has ever since, that the vessels were in the third situation, and the steamboat attempted to cross the bow of the yacht. The plaintiff in error, upon the same ground moved for a new trial, and both Courts denied it upon the ground that the proof well warranted the verdict. Therefore the eighth, to and including the fifteenth, sixteenth and seventeenth assignments in error (fols. 333, 334) should be overruled.

THIRD.—The 37th to the 48th requests all relate to the lookout. Each one of these requests were charged, except the 39th, 40th, 43d, 45th and a part of the 47th. The 39th request was that the lookout had no business in the pilot house nor in helping the wheelman.

Rule forty-four, of the Inspectors' Rules, to be found on page 199 of the Record, shows that he had the right to be in and about the pilot house. The evidence shows he had been there but a few minutes. That he in no way helped the wheelman except when the collision was inevitable, and in helping the pilot to turn the wheel to avoid the collision. (Fol. 59).

The evidence also of several pilots show that on passenger steamboats carrying staterooms the usual place of the pilot is directly in front of the pilot house (fols. 51, 62, 84, 85, 112, 113, 126). The

lookouts are called watchmen in the certificate of inspection (page 14 and page 199), and in Secs. 4,463, 4,468 in the Statute.

As to the 40th request to charge, it assumed the contrary of the facts. He was in the pilot house attending to his duty as a lookout. His attention was not diverted by any other employment.

As to the 43d request, the lookout swore he had done nothing to aid the pilot until the pilot hove the wheel hard a starboard, to avoid the collision.

As to the 45th request, the evidence is that the lookout discovered the high light when the vessels were probably a mile and a half apart, and the red light of the steamboat to come in view, substantially at the same instant of time the pilot also observed it. This was the first that any colored light could be observed on the yacht, and probably was not more than twenty seconds before the collision. (Fols. 51, 59, 60.)

As to the 47th request, the Court did charge all that the plaintiffs in error were entitled to have charged and even more. The requests as to the lookout which were charged, together with the request of the plaintiff's counsel, at the bottom of page 191, and at the top of page 192, that a total absence of a lookout, or if he was not stationed in his proper place, or if he was an incompetent lookout, in either or all of those events, if the jury believed that the collision and loss was not caused or contributed to, because of such absence, the defendants in error could recover.

THE COURT: "I will charge as you request, that the absence of any statutory signal, or the negligence to do any duty does not constitute negligence unless it, in some way, or tended in some way, to contribute to or produce the injury. The mere negligence of duty is immaterial unless it is a producing cause." The verdict of the jury settled all questions as to the lookout.

The absence of a lookout or an insufficient one is unimportant if the pilot saw the other vessel in time.

The America, 2 Otto, p. 432.
The Blue Jacket, 145 U. S. R., p. 371.

The remaining assignments in error relate to the adoption and rejection of evidence and refusal to non suit the defendants in error.

The 21st assignment in error is in reference to lookout. The witness, who is a pilot on a night passenger steamboat, was asked the question if he had any lookout except in or about the pilot house. He was allowed to answer the question, to which an exception is taken.

The inspectors' rule put in evidence shows the was right, and the evidence of other witnesses shows it is the proper place on this class of vessel for the lookout to be stationed. It turns out also to be wholly immaterial, as, from the other evidence in the case, the lookout could not have been stationed at any place on the steamboat to have given the pilot any information which would have enabled him to prevent a collision. The assignment in error should therefore be overruled.

The 20th, 22nd, 23rd and 24th requests all relate to evidence of like questions asked of pilots, if in their experience, as pilots, they

had met vessels navigating the Hudson River in the night time with such a foremast-head white light? They were allowed to answer, to which an exception was taken. We were entitled to this evidence upon the ground that the State law fixed that navigation on the Hudson River should be by a central range light and not by a masthead light. Also, that under Rule Seven, of Section 4233, requiring the central range light to be used, it was proper evidence to show that the officers of the Government having charge of the inspection of vessels, which includes the lights to be placed upon them, and licensing the officers to run steam vessels on the Hudson River had construed these laws that the central range light was the proper light. The evidence of these pilots show that long before, as well as after the international Code was enacted, the central range light has been the light used by steam vessels on the Hudson River.

It was admissible evidence upon another ground. The defendant in error had the right to show that this light was such an unusual and unknown light to overcome any presumption that the pilot should have known what it was, and taken measures to avoid the vessel on which it turned out to be, even if he was unable to see any colored lights. These assignments in error should be overruled.

In reference to the 27th assignment of error, the plaintiff in error undertook to prove by the master of the yacht that the supervising inspectors when they inspected this yacht verbally informed him he could run anywhere, with it. This was clearly illegal. The inspectors are required by law to inspect vessels and to embrace the inspection of each vessel in her certificate of inspection. This inspection certificate sets forth that she has lights. They are ocean lights, and not inland lights. They could not impeach the certificate of inspection, nor give authority to do anything which was not contained in the certificate, by the oral declarations of the inspectors. Nor could they give authority to run where she was not authorized by law to run with those lights.

Her certificate says she is permitted to run on any ocean-going route. The Hudson River is not an ocean-going route. This assignment of error should be overruled.

The 25th and 26th the motions to dismiss that complaint: They involved matters depending on conflicting evidence which were submitted to the Jury, which they did pass upon, and which cannot be reviewed here.

The 29th, 30th, 31st and 32d assignments of error were questions put to the witness, Samuel Samuels, which would call for answer to define what a coasting vessel was; if a coasting vessel is one that is engaged in the coasting trade; if a coasting vessel was not one that carried freight or passengers for pay; to define what a yacht was; for him to define if, in marine practice and use, whether a yacht was a coasting vessel as understood by mariners and nautical men.

Each of these questions were objected to; the objections were sustained. The law determines what a coasting vessel is. It also determines what a yacht is. A yacht is not a coasting vessel in the sense that she has the right to run and carry passengers and freight for pay. The statute defines what a yacht is; we submit to the

Court that it ~~will~~ would be highly improper to have the witness swear what interpretation these statutes should have placed upon them. The courts are the ones to construe the statutes.

Each of the foregoing assignments of error should be overruled.

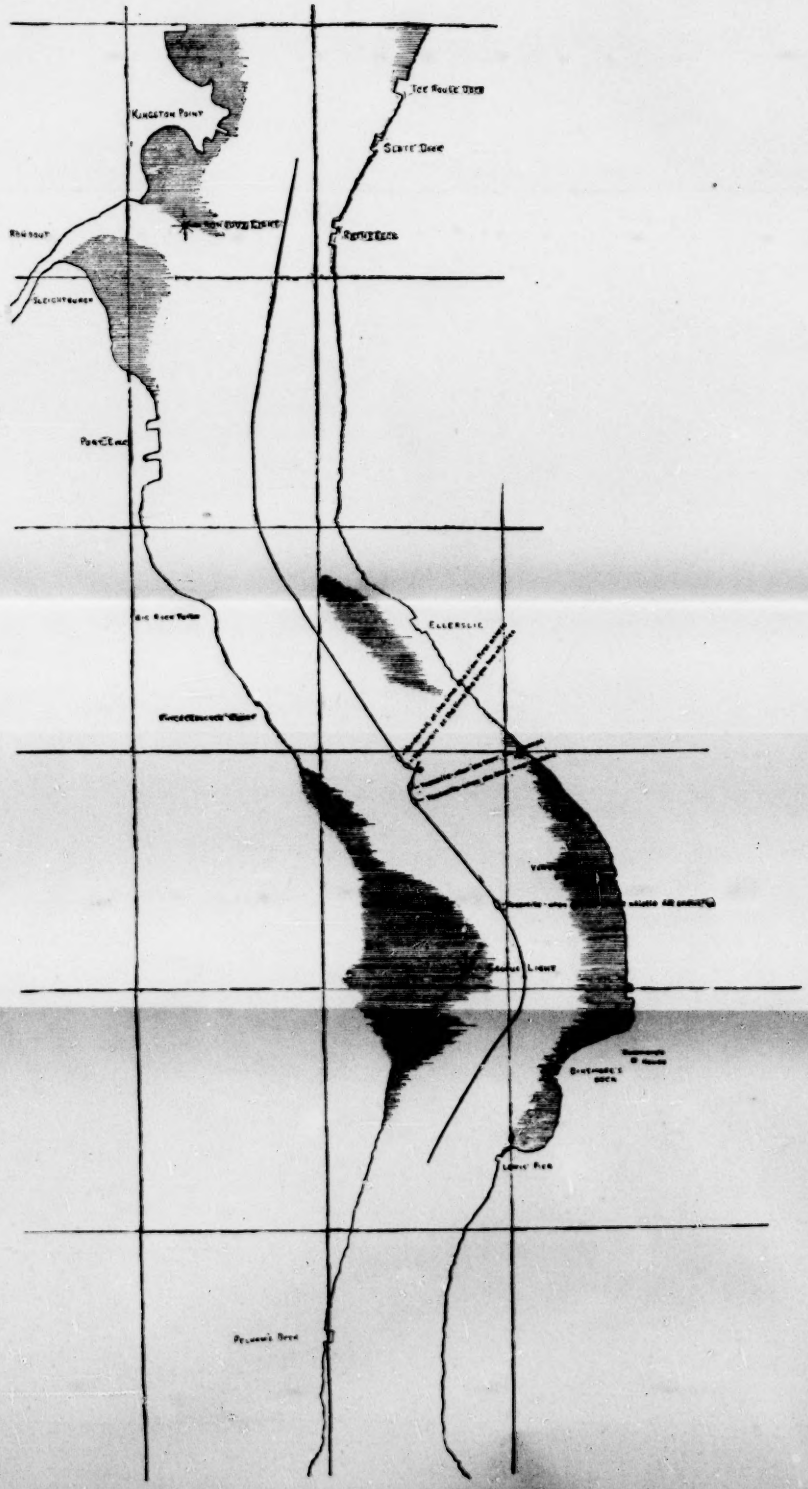
XI.

The writ of error should be dismissed, or the judgment affirmed.

HALLOCK, JENNINGS & CHASE, *Att'ys for the Defendant.*
Catskill, Green Co., N. Y.

PETER CANTINE, *of Counsel,*
Saugerties, Ulster Co., N. Y.

EMORY A. CHASE, *of Counsel,*
Catskill, Green Co., N. Y.


Kingston Point
Tee House Creek
Scott Creek
Ellerslie

Transcript
of
Record

1893

876

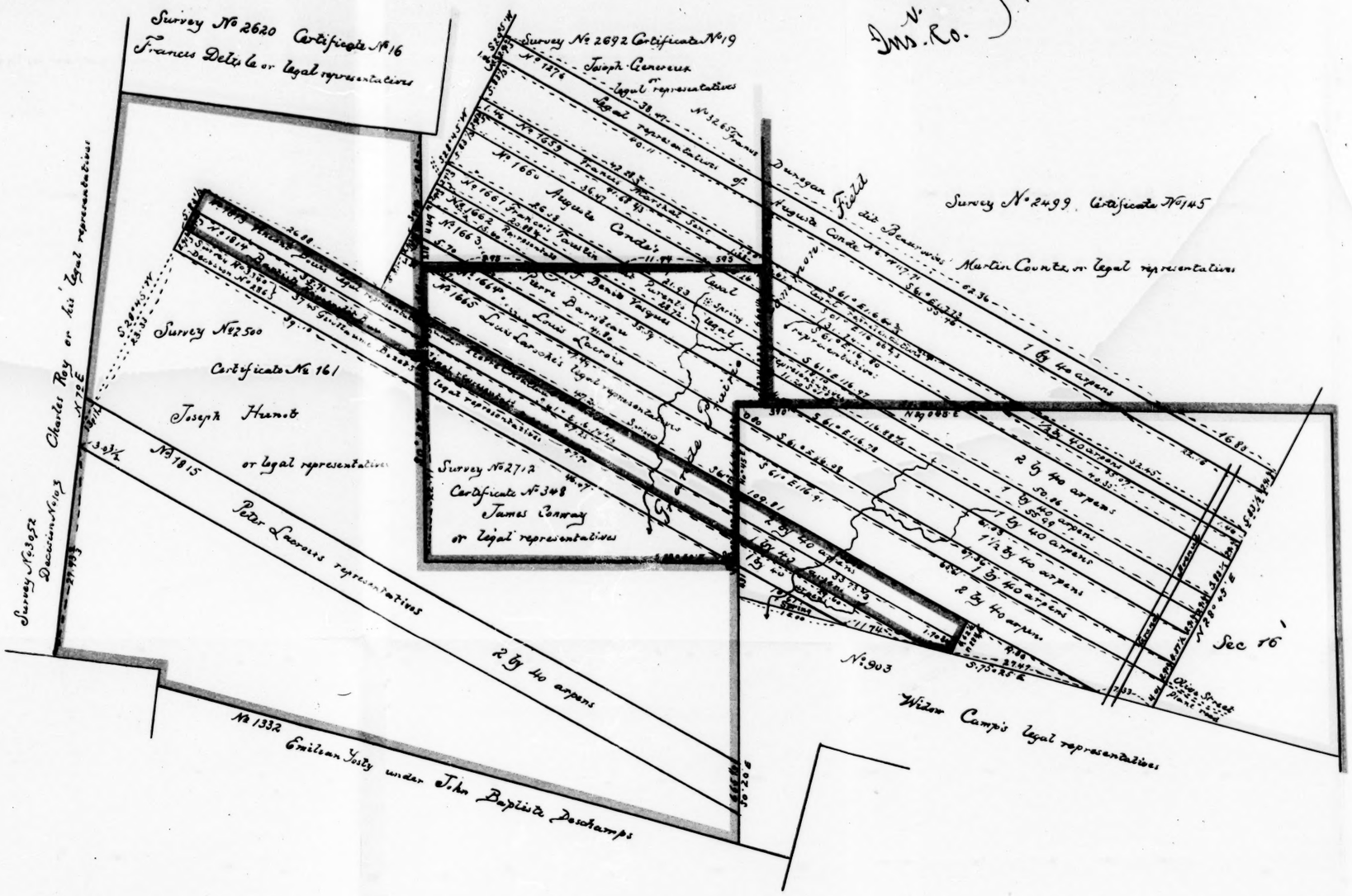
Supreme Court U. S. States
150 U. S.

633 – END

~~Clarke's Transcript – Case 938~~
~~Jewett's brief – same~~

T 45 N R. 7 E. of the 5th pl M.

No. 934.
Hammond
Ins. Co.
1p 284



Tabular Statement of the Surveys and part of Surveys shown on this ~~Diagram~~ Diagram.

No of Survey	Confirmees	Area of Survey arpens	Area of Survey acres	Confirmatory Act	References
1276	Aug ste Condés legal Repr.	40		Act of 3d March 1807 as per Comm Ct No 1276	St. papers II p 60
1659	Francis Marschal Senr legal Repr.	20		Act of 13th June 1812 as proved under act of 26 May 1824	Hunts list No 591
1660	Auguste Condés legal Repr.	80		Act of 13 June 1812 as proven under act of 26 May 1824	Hunts list No 590
1661	Francois Saulin dit Parent's legal Repr.	40		Act of 13 June 1812 as proven under Act of 26th May 1824	Hunts list No 592
1662	Representatives of Benito Vasquez	40		Act of 29th April 1816	St p ap III p 276
1663	Pierre Barribeau	60		Act of 13th June 1812 as proven under act of 26 May 1824	Hunts list No 3
1664	Louis Lacroix	40		Act of 13th June 1812 as proven under Act of 26th May 1824	Hunts list No 4
1813	Vincent Bouis legl Repr. under Pierre Chouteau	80		Act of 13th June 1812 as proven under act of 26th May 1824	Hunts list No 39
1814	Baptiste Riviere de Bacamne's legal Representatives	40		Act of 29th April 1816: also Act of 13th June 1812. as proven under act of 26th May 1824	State papers III p 280 and Hunts list No 588
3340	William Bizets legal Repr.	40		Act of 4th July 1836	Decision No 286
1815	Peter Lacroix's Repr.	80		Act of 29th April 1816	State pap III. p 278
2499	Martin Coontz or legal Repr.		640	Act of 17th February 1815	Location cert No 145
2500	Joseph Hunot or his legal Repr.		480	Act of 17th February 1815	Location cert No 61
2692	Joseph Generaux or his legal Repr.		160	Act of 17th February 1815	Location cert No 9
2712	James Conway or his legal Repr.	200		Act of 17th February 1815	Location cert No 348
	Section 16		28392	Reserved for the use of Schools	
1665	Louis Laroches legal Repr.	80		Act of 13 June 1812 as proven under act of 26th May 1824	Hunts list No 389

Variation 7°30' East

Scale of 15 chains to an inch

Office of the Surveyor General for Illinois and Missouri.
Saint Louis 26th February 1855

The above plat of private Surveys No 1276 - 1639 - 1660 - 1661 - 1662 - 1663 - 1664 - 1665 - 1813 - 1814 - 3340 and 1815, in the Grande Prairie Common field of St Louis in Township 45 North of the Base line and Range 7 East of the 5th principal meridian and showing the interferences of said Surveys with other claims is strictly conformable to the field notes thereof on file in this office, which have been examined and approved. The said Surveys were executed by William H. Cozzens, Deputy Surveyor, under the several instructions from this office dated 3d May 1846 - 22d February 1855 - and 7th August 1855. The said plat is made out pursuant to the directions of the Commissioner of the General Land office dated the 27th November 1856; and the said Surveys have been platted, described and approved in accordance with said directions. This plat is likewise hereby approved with the express reserve however that this approval is in no manner intended nor shall be construed to interfere with the valid rights, if any such exist, of the owners of the claims conflicting with the aforesaid Surveys

Jno Loughborough.
Surveyor General.

Ashley or Stokes in the Hunot Claim

Maryland Avenue

Lindell Avenue.

Boyle Avenue

Conway Tract.

City Block No 3908

Block No 37 of Peter Lindell's Second Addition.

Hattie or Hammond Spring

Position of Theo'd Hammond House

Fence

Fence

Spring

Old Tract in the Hunot Claim

Hunot Claim

Cornelia Avenue.

South Boundary of the Conway New Madrid Location

North Boundary of the Hunot New Madrid Location

East Boundary of the Conway Tract

West Boundary of the Hunot Claim

S.W. corner of the Conway Tract

Line between Hammond and Stokes

226

77.6"

328

626.5"

226.5"

125

446.4½

80

60

100

15'

"P."

Cozens' Survey of the Location of the Hammond House and Spring with reference to the Conway lines—

No. 937
Hammond Ins. Co. } p. 362

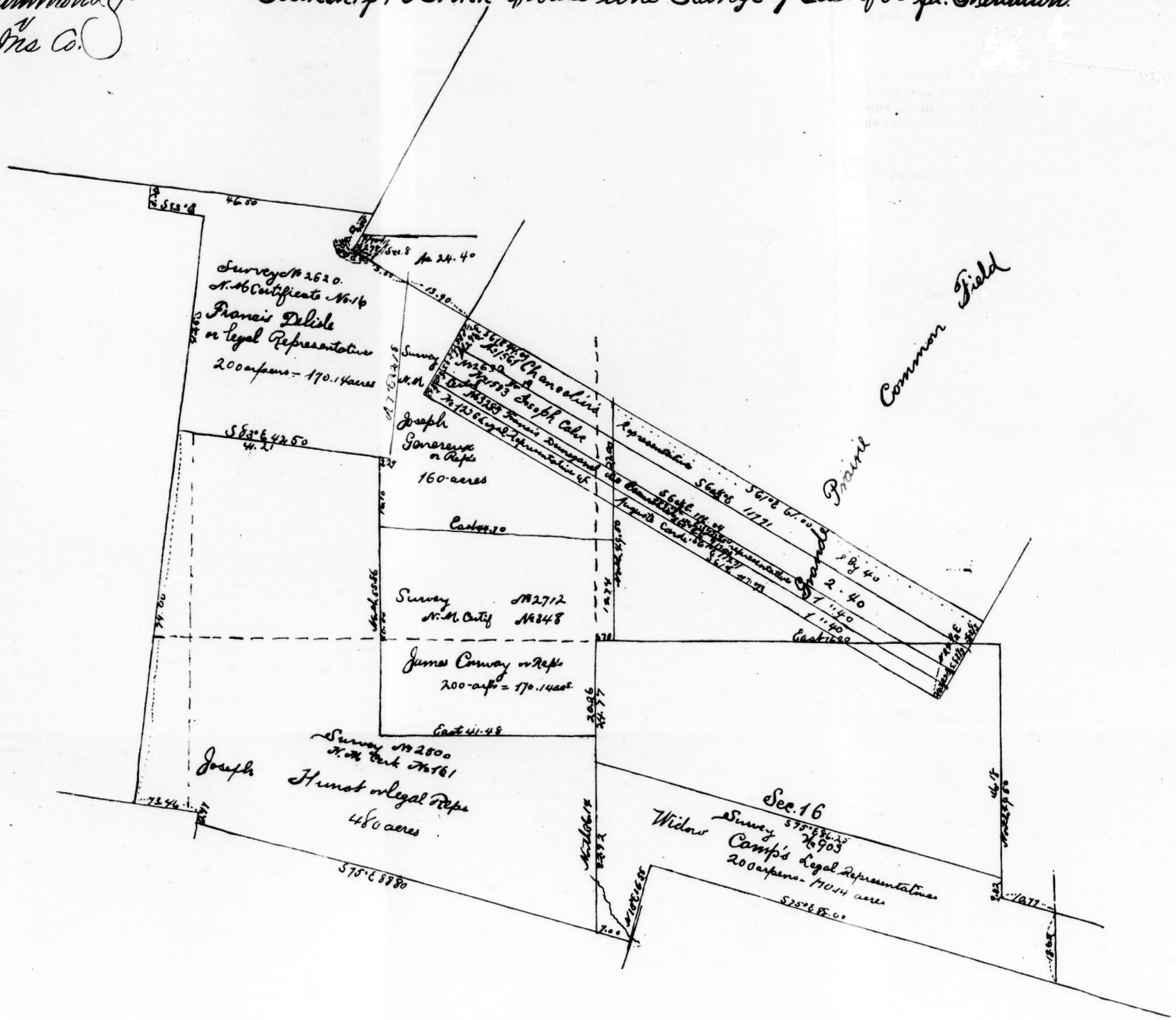
Scale 100 ft to 1 inch.

Diagram of Surveys.

Nos 2620, 2892, 1661, 1562, 3285, 1276, 2712, 903 & 2500

No. 937.
Hammond } p 368.
Ins Co.

Township 45 North of base line Range 7 East of 5th pl. Meridian.



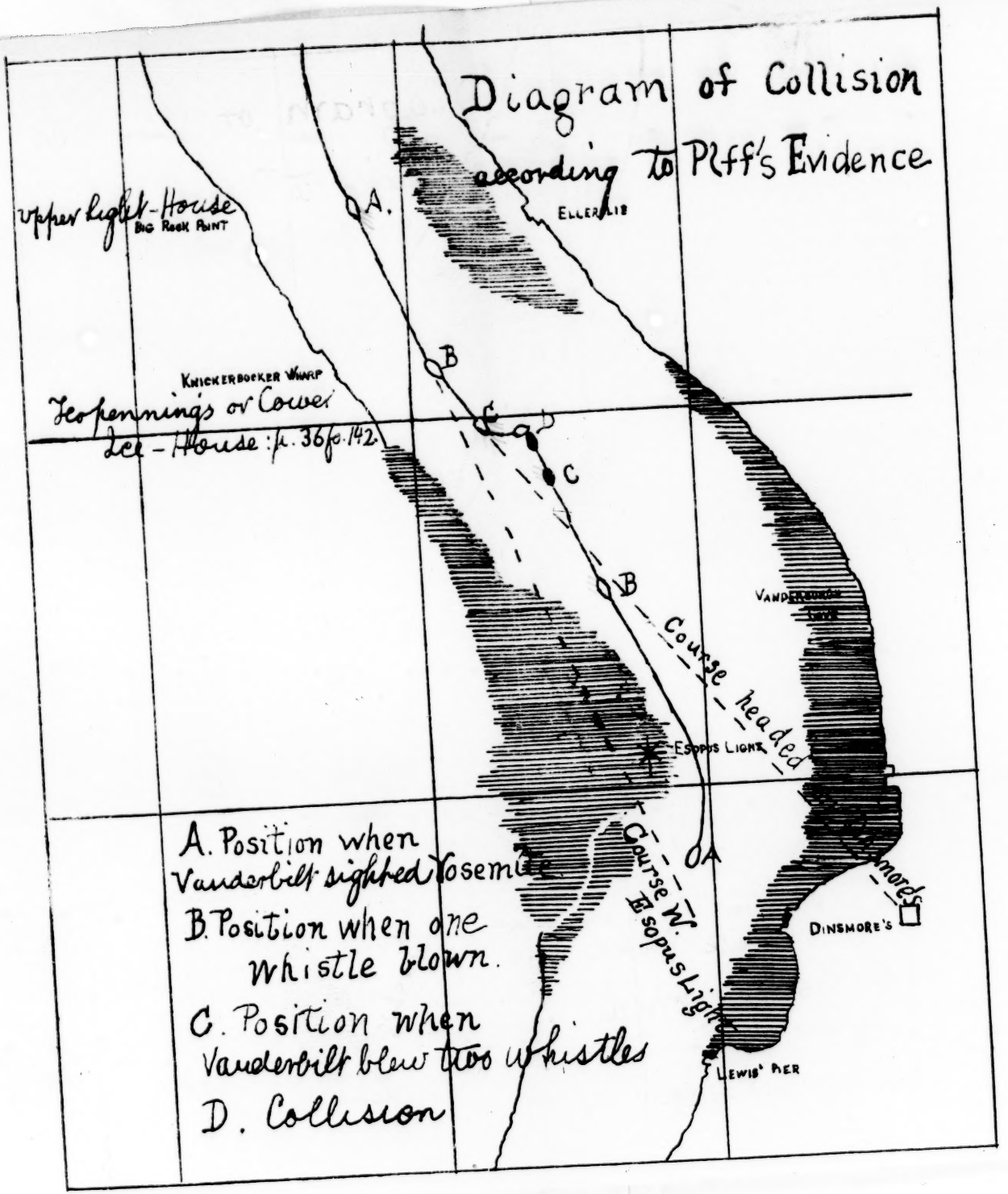


Diagram of Collision
according to Pfff's Evidence
Upper Light-House
BIG ROCK POINT
A.
ELLERSLIE
B
KNICKERBOCKER WHARF
Jeopennings or Cower
Lee-House: p. 36 f. 142.
C
B
Course headed
VANDERBILT
ESOPUS LIGHT
A. Position when Vanderbilt sighted Yosemite
B. Position when one whistle blown.
C. Position when Vanderbilt blew two whistles
D. Collision
Course W.
Esopus Light
DINSMORE'S
LEWIS' PIER

DIAGRAM FROM TIME
TWO WHISTLES BLOWN.
— X —
SCALE 1 IN. = 100 FT.